

Rule No. 27177.

In the Chancery Court

of Davidson County, Tenn.

OCTOBER TERM, 1910.

State of Tennessee, on the Relation of A. W. Wilson
and Others, Composing the College of Bishops
of the Methodist Episcopal Church,
South, and Others,

Complainants,

Against

The Board of Trust of Vanderbilt University,
and Others,

Defendants.

ORIGINAL BILL OF COMPLAINANTS and
ANSWER THERETO OF DEFENDANTS

Solicitors for Complainants:

FITZHUGH & BIGGS,
PERCY D. MADDIN,
HARRIS & HARRIS,
EDWARD C. O'REAR,

A. B. ANDERSON,
Attorney General,
Tenth Judicial District
of Tennessee.

Solicitors for Defendants:

JOHN J. VERTREES,
J. C. BRADFORD,
GEORGE T. HUGHES,
J. M. ANDERSON,
JOHN B. KEEBLE,
JORDAN STOKES,
CHARLES C. TRABUE.

resident of the State of Alabama; William D. Bradfield, Joseph S. Key, citizens and residents of the State of Texas; Robert F. Maddox, a citizen and resident of the State of Georgia; James C. McReynolds, a citizen and resident of the State of New York; Eugene J. Buffington, a citizen and resident of the State of Illinois; Horace H. White, a citizen and resident of the State of Louisiana; William J. Young, a citizen and resident of the State of Virginia, who constitute the Board of Trust of Vanderbilt University, as aforesaid; and Claude Waller, a citizen and resident of Davidson County, Tennessee; J. A. Robins, a citizen and resident of Carroll County, Tennessee; and R. F. Jackson, a citizen and resident of Davidson County, Tennessee, who claim to be, and are acting as, members of the Board of Trust of Vanderbilt University, as aforesaid; and Vanderbilt University, a Tennessee corporation, domiciled at Nashville, in Davidson County, Tennessee, *Defendants*.

To the Honorable John Allison, Chancellor presiding in the Chancery Court of Davidson County, Tennessee:

Your complainant respectfully represents and shows unto your honor:

I.

1. The relators, A. W. Wilson, W. A. Candler, H. C. Morrison, E. E. Hoss, James Atkins, Collins Denny, J. C. Kilgo, W. B. Murrah, W. R. Lambuth, R. G. Waterhouse, E. D. Mouzon, and J. H. McCoy, are members of the College of Bishops of the Methodist Episcopal Church, South, and constitute all of the members of said College now in active service except the defendant, E. R. Hendrix. As such Bishops they constitute the Visitors of Vanderbilt University and Board of Supervisors of said University, to whom is confided visitatorial power over Vanderbilt University. Bishops O. P. Fitzgerald and J. S. Key are superannuated members of the College of Bishops, but have been, by the General Conference, relieved of active duties as such.

2. The relators, V. A. Godbey, N. E. Harris, and A. W. Biggs, are citizens and residents as stated in the caption, and join as relators on account of their election by the General Conference of the Methodist Episcopal Church, South, at its regular session,

held in Asheville, North Carolina, in May, 1910, as members of the Board of Trust of Vanderbilt University, their election to said Board of Trust and acceptance being set out more fully hereinafter.

3. The defendants are members of the Board of Trust of Vanderbilt University, except the defendants, Claude Waller, James A. Robins, and R. F. Jackson, who are now claiming to be members of said Board of Trust; the basis of their said claim will be made more fully to appear hereafter in this bill. The citizenship of the parties is stated in the caption.

4. The Methodist Episcopal Church, South, is a voluntary religious society, of episcopal form of government. By its Book of Discipline, which is the accepted authoritative declaration of the distribution of its powers, it is provided, and is, in fact, that the General Conference of the Church is the highest governmental agency of the society, from which and through which all subordinate bodies and officials derive their authority and power. The General Conference, an elective representative body, meets quadrennially and is the sole legislative body of the Church. The Bishops, elected by the General Conference, are the chief executives of the Church. There are thirteen Bishops of the Methodist Episcopal Church, South, in active service, all of whom, except Bishop E. R. Hendrix, join as complainants herein.

The Annual Conferences govern in their respective territories set out by the General Conference. Among the enterprises of the said Church, and as an incident of its main purpose, is that of providing and maintaining institutions of learning. These are maintained by endowments secured through the influence of Conference representatives, either General or Annual, and by assessments upon the membership of the Church, which are collected and apportioned under the authority of the respective Conferences. Of the institutions of learning so projected, endowed, and maintained by the Methodist Episcopal Church, South, is Vanderbilt University, established, governed, and maintained as herein stated. While the several Annual Conferences herein named began that particular enterprise, it was determined among them and the other Annual Conferences as represented in the General Conference that the latter should assume toward Vanderbilt University the sole authority as the

patronizing body, and it was done at the General Conference at Baltimore, Maryland, in 1898, by the assent of the original patronizing Conferences and of the Vanderbilt University.

This was not intended by the parties to be, and, in fact, was not, a change of the relation of the University to the Church, but was a change in the internal regulation of the Church with respect to the subject of the Church's university.

II.

1. The Vanderbilt University is a corporation organized under Chapter 54 of the Acts of the General Assembly of the State of Tennessee of 1871. It was organized under the corporate name of "The Central University of the Methodist Episcopal Church, South," and the charter of incorporation was granted by the Chancery Court of Davidson County, Tennessee, at the April term, 1872. The name of the corporation was subsequently changed by the said Court at the April term, 1873, to "The Vanderbilt University," by which name it has since been known.

III.

1. The Central University of the Methodist Episcopal Church, South, was established as a university of and by certain Annual Conferences of said Church, in order to provide for the youth of the Church and the country an institution of learning of the highest order, founded upon the surest basis, where they could prosecute theological, literary, scientific, and professional studies to an extent as great and in a manner as thorough as their wants might demand and their means admit.

2. The Church had long felt the need of a great central college or university, but the first authoritative step taken in that direction was a resolution offered by Rev. Wellborn Mooney at the Tennessee Conference of the Methodist Episcopal Church, South, held at Lebanon, Tennessee, October 4 to 9, 1871, reading as follows:

"Resolved, That we request the presiding Bishop to appoint a committee of three to confer with the Memphis, North Alabama, North Mississippi, and any other Conferences likely to coöperate with us in reference to the establishment and endowment of a Methodist university of high grade and large endowment."

This resolution was adopted, and a committee consisting of Drs. D. C. Kelley, A. L. P. Green, and R. A. Young was appointed.

3. At the Memphis Conference of said Church, held at Trenton, November 17, 1871, after a brief address by Dr. A. L. P. Green, that Conference by a resolution authorized the appointment of a committee of three to confer with the committee appointed by the Tennessee and other Conferences with reference to said proposed university. Revs. W. C. Johnson, S. W. Moore, and T. L. Boswell were appointed as such committee. The subsequent day of the Memphis Conference the following resolution was adopted :

“Resolved, 1. That three laymen be added to the committee on the proposed university.

“2. That Conferences acting hereafter in favor of this enterprise be requested each to appoint a committee of six—three preachers and three laymen.

“3. That the committees already appointed be requested to nominate to the Bishops who preside at their sessions proper persons to be appointed by them on the committees, so as to conform to this action.”

The Bishop appointed the following laymen on the committee of the proposed university—to wit: Hons. Milton Brown, R. J. Morgan, and M. J. Wicks. Similar action was taken and committees appointed by the North Alabama Conference of said Church at its annual meeting held at Florence, November 16, 1871; by the Mississippi Conference at its meeting at Meridian, Mississippi, on December 3–19, 1871; by the North Mississippi Conference of said Church at its annual meeting held at Columbus, December 1, 1871; by the Alabama Conference at its annual meeting held at Mobile, December 2, 1871; by the Arkansas Conference of the Methodist Episcopal Church, South, at its session held at Bentonville, Arkansas, in 1871; also by the White River and the Louisiana Conferences of said Church, in the same year.

4. These committees, together with Bishops McTyeire and Paine, of the Methodist Episcopal Church, South, met in a convention in the city of Memphis, Tennessee, on the 24th of January, 1872, which convention lasted until and including the 27th day of January of said year. At said convention, called solely

for the purpose of taking steps to establish a university under the patronage and control of those Conferences of the Church which would participate, the following resolutions (hereinafter referred to as the MEMPHIS RESOLUTIONS), were adopted:

“1. *Resolved by the Convention*, That measures be adopted looking to the establishment as speedily as practicable of an institution of learning of the highest order and upon the surest basis, where the youth of the Church and country may prosecute theological, literary, scientific, and professional studies to an extent as great and in a manner as thorough as their wants demand.

“2. That this institution shall be called the Central University of the Methodist Episcopal Church, South.

“3. That it shall consist at present of five schools or departments—viz.: (1) a theological school for the training of our young preachers, who, on application for admission, shall present a recommendation from a Quarterly or an Annual Conference, and shall have attained a standard of education equal to that required for admission on trial into an Annual Conference; and instruction to them shall be free both in the theological and the literary and scientific departments; (2) a literary and scientific school; (3) a normal school; (4) a law school; (5) a medical school.

“4. That the sum of one million dollars is necessary in order to realize fully the object desired, and not less than five hundred thousand dollars must be secured as a condition precedent to the opening of any department of the university.

“5. That the location of the University shall be left to the decision of the College of Bishops of the Methodist Episcopal Church, South.

“6. That the carrying out of this whole scheme is hereby committed to the following persons—viz.: William C. Johnson, Robert J. Morgan, Smith W. Moore, Milton Brown, Alexander L. P. Green, Jordan Stokes, David C. Kelley, Edward H. East, Robert A. Young, Landon C. Garland, Philip Tuggle, John M. Steel, James H. McFerrin, Christopher D. Oliver, William Dickson, Edward Wadsworth, William M. Byrd, William L. C. Hunnicutt, Thomas Christian, James L. Borden, William H. Foster, Andrew Hunter, James L. DeYampert, and David T. Reynolds, who shall take immediate steps for securing a suitable charter and incorporation, and shall be a Board of Trust, with power to solicit and invest funds, appoint an agent or agents, and do whatever else is necessary for the execution of this scheme.

“7. That seven of the Board of Trust at any meeting regularly called shall constitute a quorum.

“8. That provision be made in the charter for giving a fair representation in the management of the University to any Annual Conference hereafter coöperating with us.

“9. That the Bishops of the Methodist Episcopal Church, South, be and hereby are requested to act as a Board of Supervision of the University, or any of its departments, and jointly with the Board of Trust to elect officers and professors, and prescribe the course of study and the plan of government.”

5. In accordance with said resolutions, the parties named in Paragraph 6 of the Memphis resolutions proceeded at once to employ counsel—to wit: Hon. Thomas H. Malone, a prominent lawyer of Nashville—and a petition was presented to the Chancery Court of Davidson County, Tennessee, in behalf of the said parties, acting as representatives of the several Conferences therein named of the Methodist Episcopal Church, South (the petition so stating), reciting the Memphis convention and the resolutions adopted there, and praying for a charter of incorporation under the laws of the State of Tennessee. In accordance with the prayer of the petition, the Chancery Court of Davidson County, Tennessee, did, at its April term, 1872, grant a charter of incorporation to “THE CENTRAL UNIVERSITY OF THE METHODIST EPISCOPAL CHURCH, SOUTH.” The said decree, which by law constituted the charter, is in the following words and figures, to wit:

“THE CENTRAL UNIVERSITY OF THE METHODIST EPISCOPAL
CHURCH, SOUTH. *Ex Parte.*

“This matter came up on this day to be heard before the Hon. Nathaniel Baxter, Judge, etc., of the Circuit Court of Davidson County, sitting by interchange with the Hon. Edward H. East, the Chancellor presiding, but who was incompetent to preside and hear this cause for the reason that he was interested herein; and the same was heard upon the petition of W. C. Johnson, Robert J. Morgan, Smith W. Moore, and Milton Brown, citizens and residents of the State of Tennessee and representatives of the Memphis Conference of the Methodist Episcopal Church, South; and Alexander L. P. Green, Jordan Stokes, David C. Kelley, Edward H. East, David T. Reynolds, and Robert A. Young, citizens and residents of Tennessee and representatives of the Tennessee Conference; and Landon C. Garland, a citizen and resident of Mississippi; and Philip Tuggle, a citizen and resident of Tennessee, the two latter representing the North Mississippi Conference; and James H. McFerrin and John M.

Steel, citizens of the State of Arkansas and representatives of the White River Conference; and Christopher D. Oliver and William Dickson, citizens of the State of Alabama and representatives of the North Alabama Conference; and Edward Wadsworth and W. M. Byrd, citizens of the State of Alabama and representatives of the Alabama Conference; and W. L. C. Hunnicutt and Thomas Christian, citizens of the State of Mississippi and representatives of the Mississippi Conference; and James L. Borden and William H. Foster, citizens of the State of Louisiana and representatives of the Louisiana Conference; and Andrew Hunter and J. L. DeYampert, citizens of the State of Arkansas and representatives of the Little Rock Conference: and it appearing to the court that said persons, in their said petition, prayed to be incorporated under the name and style of the Central University of the Methodist Episcopal Church, South, the object and plan of said university having been fully set forth in resolutions passed by the delegates of said Conferences at a convention of the same held in the city of Memphis on January 24, 25, 26, and 27, 1872, and which resolutions are in words and figures as follows:

“‘1. *Resolved by the Convention*, That measures be adopted looking to the establishment as speedily as practicable of an institution of learning of the highest order and upon the surest basis, where the youth of the Church and country may prosecute theological, literary, scientific, and professional studies to an extent as great and in manner as thorough as their wants demand.

“‘2. That this institution shall be called the Central University of the Methodist Episcopal Church, South.

“‘3. That it shall consist at present of five schools or departments—viz.: (1) a theological school for the training of our young preachers, who, on application for admission, shall present a recommendation from a Quarterly or Annual Conference, and shall have attained a standard of education equal to that required for admission on trial into an Annual Conference; and instruction to them shall be free both in the theological and the literary and scientific departments; (2) a literary and scientific school; (3) a normal school; (4) a law school; (5) a medical school.

“‘4. That the sum of one million dollars is necessary in order to realize fully the object desired, and not less than five hundred thousand dollars must be secured as a condition precedent to the opening of any department of the university.

“‘5. That the location of the university shall be left to the decision of the College of Bishops of the Methodist Episcopal Church, South.

“ ‘6. That the carrying out of this whole scheme is hereby committed to the following persons—viz.: William C. Johnson, Robert J. Morgan, Smith W. Moore, Milton Brown, Alexander L. P. Green, Jordan Stokes, David C. Kelley, Edward H. East, Robert A. Young, Landon C. Garland, Philip Tuggle, John M. Steel, James H. McFerrin, Christopher D. Oliver, William Dickson, Edward Wadsworth, William M. Byrd, William L. C. Hunnicutt, Thomas Christian, James L. Borden, William H. Foster, Andrew Hunter, James L. DeYampert, and David T. Reynolds, who shall take immediate steps for securing a suitable charter and incorporation, and shall be a Board of Trust, with power to solicit and invest funds, appoint an agent or agents, and do whatever else is necessary for the execution of this scheme.

“ ‘7. That seven of the Board of Trust at any meeting regularly called shall constitute a quorum.

“ ‘8. That provision be made in the charter for giving a fair representation in the management of the university to any Annual Conference hereafter coöperating with us.

“ ‘9. That the Bishops of the Methodist Episcopal Church, South, be and hereby are requested to act as a Board of Supervision of the university or any of its departments, and jointly with the Board of Trust to elect officers and professors, and prescribe the course of study and the plan of government.’

“And it further appearing to the Court that, upon the filing of said petition, the Clerk and Master of this Court caused, by an order at rules, the same to be advertised, in pursuance of the statute in such cases made and prescribed; and it further appearing to the Court that no one has appeared and made known any objection to the granting of the prayer of the petition, and the Court, upon inspection of the designs and objects of said corporation, finds nothing therein contained to be against public policy or good morals or in conflict with the Constitution and laws of the State or of the United States, is pleased to grant the prayer of the same, and doth hereby order and adjudge and decree that the petitioners be declared a body politic and corporate under the name and style of ‘The Central University of the Methodist Episcopal Church, South,’ and in that name may sue and be sued, plead and be impleaded in the courts of this State or of the other States of the Union, or of the United States of America; may have a common seal, which may be altered at pleasure; shall have perpetual succession; may solicit and receive subscriptions, donations, legacies, and devises; may hold real estate and personal property in such amounts as the business of the corporation requires, and may receive the same

by contract, gift, will, or devise, and shall hold the same for the purpose of said incorporation with all the lawful conditions imposed by the donor; may appoint such subordinate officers and agents as the business of the corporation requires, prescribe their duties and fix their compensation; may make by-laws not inconsistent with the laws of the land or this charter or the resolutions of the convention at Memphis, as set out herein, which resolutions are hereby adopted as a part of this charter, but shall make all by-laws necessary and proper to carry out the objects of said resolutions, as well as for the management of its property and the regulation of its affairs; and may also have power to pass all by-laws necessary to the use of the powers therein given, or which by law may hereafter be conferred; and all said powers, rights, and privileges, together with such others as are not herein specially given and referred to, are hereby conferred upon said corporation in as full, complete, and ample manner as by the laws of the State the same can or might be; and said corporation shall have the power to confer all the degrees of merit and honor usually conferred by universities. It is further decreed that petitioners pay the costs of this proceeding, and that the Clerk and Master issue to them a certified copy of this decree.

“NATHANIEL BAXTER, *Judge.*

“I, Nathaniel Baxter, Jr., Clerk and Master of the Chancery Court at Nashville, Tenn., do hereby certify that the foregoing is a true and perfect copy of a decree entered in Minute Book W, page 267, rendered at April term in the cause set out in the caption, and which is now on file in my office.

“In testimony whereof I have hereunto set my hand and affixed the official seal of said court, at Nashville, on this the nineteenth day of August, 1872, and ninety-seventh year of American independence.

“NATHANIEL BAXTER, JR., *Clerk and Master*

“By Alex. B. Hoge, *Deputy Clerk and Master.*”

(Seal.)

On August 22, 1872, the incorporators accepted the charter as above granted.

IV

1. The incorporators reported their action to the several Annual Conferences above named, making a printed report in which account was given and a report made of the Memphis convention, the resolutions adopted, the application for charter, and the incorporation of the Central University of the Methodist

Episcopal Church, South, at the request of the petitioners representing the several Annual Conferences therein set out. In addition, the incorporators who by the charter were made the first Board of Trust requested the nomination of four members by each Conference to constitute the Board of Trust, and the several Conferences took action as follows:

2. The Tennessee Conference, at its meeting in Nashville, Tennessee, held October 16–23, 1872, received the report of the committee and took the following action:

“The report of the committee appointed at our last session to take into consideration the establishment of a university was taken from the table, and, on motion of L. C. Bryan, was received. (It is a large printed pamphlet.) On motion of Dr. A. L. P. Green, seconded by Dr. John B. McFerrin, the report, with alterations and amendments proposed by Dr. McFerrin, was unanimously adopted. The Bishop was requested to appoint an agent for Central University in the bounds of this Conference. J. F. Hughes moved that the same brethren be nominated on the Board of Trust who are already serving in that capacity: A. L. P. Green, D. C. Kelley, R. A. Young, E. H. East, Jordan Stokes, and D. T. Reynolds.”

This was done, and Dr. A. L. P. Green was appointed General Secretary of the Central University by the presiding Bishop.

3. At the Memphis Conference, held at Somerville, Tennessee, November 20–25, 1872, the report was submitted by the following members of the committee appointed: W. C. Johnson, S. W. Moore, T. L. Boswell, R. J. Morgan, and the following resolution was adopted:

“*Resolved*, 1. That in the interest of the highest literary, scientific, and moral culture, under the influence of Christian principles, we heartily approve what has been done toward the establishment of the Central University.

“2. That we willingly coöperate with other Annual Conferences in efforts to secure \$500,000, at least, as an endowment fund; and, with this object in view, we earnestly invoke the enlightened liberality of our members and friends.

“3. That we invite the Rev. Dr. Green, Treasurer of the Board of Trust, to visit our charges as he may be able in behalf of the university; and request the Bishop to appoint _____ agent, to coöperate with him in canvassing for an endowment fund.”

The above resolution was unanimously adopted, and the blank in the third resolution was, on motion, filled with the name of W. M. Patterson. Subsequently the Conference nominated W. C. Johnson, S. W. Moore, R. J. Morgan, and Milton Brown "to represent the Memphis Conference on the Board."

4. At the White River Conference, session of 1872, the following resolution was adopted:

"That the presiding elders be appointed a committee to obtain funds for the Central University, by donation, subscription, or bequest, as occasion may offer; and also that we kindly receive among us the Rev. Dr. Green, Financial Secretary for said university."

The Bishop presented the following names for confirmation by the Conference as nominees to the Board of Trust of Central University—to wit: John M. Steel, George Dannelly, James H. McFerrin, and J. W. Stayton, and they were unanimously selected.

5. The Arkansas Annual Conference, at its thirty-seventh session, held at Bentonville, Arkansas, in 1872, adopted the following resolutions:

"1. That we express our decided approval of the Central University, and pledge ourselves to coöperate with other Annual Conferences for its establishment.

"2. That, as requested, we nominate four brethren to represent the Arkansas Conference on the Board of Trust under the provision of the charter already obtained by the Board of Trust.

"3. That we invite the Rev. A. L. P. Green, D.D., Treasurer of the Board of Trust, and any other appointees of the Board, to visit our charges in their efforts to endow the Central University; and in this work we cordially commend them to our people and to all the friends of Christian education."

Four members of that Conference were nominated for membership in the Board of Trust.

6. The North Mississippi Conference, at its regular session, held on November 28, 1872, adopted the following resolutions:

"*Resolved*, 1. That this Conference will coöperate with other Conferences interested in the same enterprise in establishing a university of the highest grade, to be called the Central University.

"2. That this Conference approve of the measures already taken by the existing Board of Trust, and do hereby confirm the same.

"3. That Philip Tuggle, L. C. Garland, T. Y. Ramsey, and L. Q. C. Lamar are hereby appointed members of said Board of Trust.

"4. That the Bishop be respectfully requested to appoint an agent to solicit subscriptions to said institution within our bounds."

7. At the North Alabama Conference, in its annual session held at Tuscaloosa, Alabama, November 25, 1872, the following resolution was introduced:

"Resolved, That we regard the establishment of a central university in our Church as of the greatest importance, and that this Conference heartily concur in the movement as presented by Dr. Kelley, and nominate the following persons as representatives in the Board of Trust: G. D. Oliver, James M. Wright, John S. Davis, and J. W. Whitten.

"J. A. THOMPSON,
"J. M. BOLAND."

This resolution was finally laid upon the table, and the Conference adjourned without taking further action. The North Alabama Conference, at its annual session, held at Huntsville, Alabama, on the 12th day of November, 1874, elected the following members to represent that Conference on the Board of Trust: C. D. Oliver, Anson West, Hon. W. B. Wood, J. J. Dement. And thus the North Alabama Conference was restored to and took its place as one of the patronizing Conferences of said university and as a member of said corporation, all the members assenting thereto.

8. And thus, by the action of the Conferences, the university as incorporated was adopted by the Conferences and the members of the Board of Trust selected by them.

9. The Board of Trust thus selected by the several Annual Conferences as members of the corporation held their first meeting at Brownsville, Tennessee, on the 17th day of January, 1873, and adopted by-laws for the government of the corporation, the seventh by-law there adopted being as follows:

"VII. Each coöperating Conference being entitled to four members or representatives in the Board of Trust, should any vacancy or vacancies occur, the Board shall fill the same upon the nomination of the Conference to be represented."

This by-law remained in effect until the 3d of May, 1875, when, on motion of Judge East, the following by-law was adopted instead of By-Law No. VII, to wit:

“Each coöperating Conference being entitled to four members or representatives in this Board of Trust, should any vacancy occur in the representation of any Conference, the same shall be filled upon the nomination of this Board to the Conference in which the vacancy occurred, and stand subject to its nomination.”

Thus by both of the by-laws adopted by the Board of Trust there was recognition by the then members, who had themselves been chosen by the several patronizing Conferences, that the patronizing Conferences were the members of the corporation and had the right to select their representatives as the members of the Board of Trust, and that the Board of Trust was constituted and should remain constituted at all future times by members either nominated by the Board of Trust and confirmed by the Conferences, or, as expressed in the by-law adopted in 1875, upon the nomination by the Board to the Conferences.

V

1. The Board of Trust selected as aforesaid met in January, 1873, and issued an address setting forth the organization of the corporation and the purposes as specified by the Memphis resolutions, and called for funds with which to endow the university. Through Bishop McTyeire, who presided at the Memphis convention and was thoroughly familiar with the corporation as organized, this appeal, together with the plan and scope of the work, was presented to Mr. Cornelius Vanderbilt, of New York, and resulted in the latter's munificent gift, made in the following letter:

“NEW YORK, MARCH 17, 1873.

“*To Bishop H. N. McTyeire, of Nashville:*

“I make the following offer, through you, to the corporation known as *The Central University of the Methodist Episcopal Church, South:*

“First. I authorize you to procure suitable grounds, not less than from twenty to fifty acres; properly located for the erection of the following work:

“Second. To erect thereon suitable buildings for the uses of the university.

“Third. You to procure plans and specifications for such buildings, and submit them to me; and, when approved, the money for the foregoing objects to be furnished by me as it is needed.

“Fourth. The sum included in the foregoing items, together with the ‘endowment fund’ and the ‘library fund,’ shall not be less in the aggregate than five hundred thousand dollars (\$500,000); and these last two funds shall be furnished to the corporation so soon as the buildings for the university are completed and ready to be used.

“The foregoing being subject to the following conditions:

“First. That you accept the Presidency of the Board of Trust, receiving therefor a salary of three thousand dollars per annum and the use of a dwelling house, free of rent, on or near the university grounds.

“Second. Upon your death or resignation, the Board of Trust shall elect a President.

“Third. To check hasty or injudicious appropriations or measures, the President shall have authority, whenever he objects to any act of the Board, to signify his objection in writing within ten days after its enactment; and no such act is to be valid unless upon reconsideration it be passed by a three-fourths vote of the Board.

“Fourth. The amount set apart by me as an ‘endowment fund’ shall be forever inviolable, and shall be kept safely invested, and the interest and revenue only used in carrying on the university. The form of investment which I prefer, and in which I reserve the privilege to give the money for the said fund, is in seven per cent, first mortgage bonds of the New York Central and Hudson River Railroad Company, to be ‘registered’ in the name of the corporation, and to be transferred only upon a special vote of the Board of Trust.

“Fifth. The university is to be located in or near Nashville, Tennessee.

“Respectfully submitted, C. VANDERBILT.”

2. This offer of Mr. Vanderbilt was on the 26th day of March, 1873, accepted by the Board, which passed the following resolutions:

“Whereas, Mr. C. Vanderbilt, of New York, has offered, through Bishop H. N. McTyeire, to the Central University of the Methodist Episcopal Church, South, the munificent sum of five hundred thousand dollars; and

“Whereas, The Bishop has this day presented to this Board, duly convened, the offer of Mr. C. Vanderbilt in writing; therefore,

“1. *Resolved*, That we accept with profound gratitude this donation, with all the terms and conditions specified in said proposition.

“2. *Resolved*, That, as an expression of our appreciation of this liberality, we instruct the committee hereinafter mentioned to ask the honorable Chancery Court to change the name and style of our corporation from ‘The Central University of the Methodist Episcopal Church, South,’ to ‘Vanderbilt University,’ and that the institution thus endowed and chartered shall be from henceforth known and called by this name.

“3. *Resolved*, That the Hon. M. Brown, the Hon. E. H. East, and the Rev. D. C. Kelley, D.D., be and they are hereby authorized and requested to obtain at the earliest practicable day such modifications of our charter as will enable this Board to conform its future operations to the conditions aforesaid.

“4. *Resolved*, That the Secretary is requested to convey to Mr. C. Vanderbilt the sincere thanks of this Board with a copy of these resolutions.

“S. W. MOORE,
“W. C. JOHNSON.”

3. The action of the Board was satisfactory to Mr. Vanderbilt, who replied thereto on the 31st day of March, 1873, as follows:

“NEW YORK, March 31, 1873.

“D. C. Kelley, Esq., Secretary.

“*My Dear Sir*: Your favor of the twenty-seventh inst., inclosing a resolution of the Central University of the Methodist Episcopal Church, South, passed the twenty-sixth inst., is received and is very satisfactory.

“Very respectfully yours, C. VANDERBILT.”

VI.

1. At the time of making this donation to the university Mr. Vanderbilt did not suggest any change in the charter or in the membership of the corporation or in the relation of the patronizing Conferences to the university; and the only change that was made or suggested at the time was that set forth in the resolutions above quoted—to wit, to change the name of the university as an expression of appreciation of his liberality; and this sug-

gestion emanated from the Board of Trust and was done, a copy of the petition to change the name and of the decree thereon being exhibited herewith as Exhibits "A" and "B."

2. The several patronizing Conferences, members of the corporation, confirmed the action of the Board of Trust in changing the name to Vanderbilt University.

(a) The North Mississippi Conference, at its annual session held at Grenada, Mississippi, on November 29, 1873, at which time ten thousand dollars (\$10,000) was subscribed to Vanderbilt University. The following resolution was adopted:

"We rejoice in the high favor which the Vanderbilt University is receiving from the patronizing Conferences. The work of increasing its funds goes bravely on, and we look forward to its early opening with great expectation. It will furnish our people the highest scholastic training, as well as the most thorough preparation for any department of professional business. Its munificent proposition to devote the annual interest on \$200,000 to the education of candidates for the ministry and ministers' sons must commend itself to the heartiest support and largest liberality of all our preachers as well as of our laymen. This large sum, sacred to this noble object, in connection with the Biblical Department, which we learn is to be one of the first established, must, we think, inaugurate a new era in our Church."

(b) At the thirty-eighth session of the Arkansas Conference the following resolution was adopted:

"We feel that it is proper for this Conference to express their appreciation of the munificent donation of \$500,000 to Southern Methodism from Mr. Vanderbilt. We would deem it wise policy for this Conference to unite in raising the \$200,000 asked for by the Vanderbilt University.

"*Resolved*, That we regard Dr. Winfield as our authorized agent for Vanderbilt University, and trust he will raise our portion of the \$200,000."

(c) At the Memphis Conference, held at Jackson, Tennessee, December 1, 1873, after an address by the Rev. Dr. Young in behalf of Vanderbilt University, the following action was taken:

"The Rev. Dr. Young, Secretary of the Vanderbilt University, made an address in behalf of that institution, at the close of which he received subscriptions to its endowment fund amounting to \$5,000.

“Report No. 2 of the Committee on Education was presented and, having been read, was adopted. It strongly favors the Vanderbilt University.”

That report is as follows:

“We offer the following resolutions in regard to our great educational enterprise, the Vanderbilt University:

“*Resolved*, 1. That we recognize with gratitude the signal success which has already attended our great educational enterprise, the Vanderbilt University, and we look with pleasure and hope upon the efforts being made to establish an institution of learning of the very highest grade and affording the amplest facilities to our young men in all departments of Christian education.

“2. That we do all in our power to sustain this most worthy enterprise, and will recommend it to the hearty and liberal support of our people.

“3. That we welcome among us and invite to our charges the Rev. Dr. Young, Secretary of the Vanderbilt University.”

(*d*) At the Tennessee Conference, in its meeting at Franklin, Tennessee, October 8–15, 1873, the following report was made by the Committee on Education:

“At your session two years since at Lebanon you had the wisdom to inaugurate a university scheme of the largest magnitude. We are glad to report to you that God our Father has given his approval in a very marked manner to your faith and zeal. What you then expected to accomplish only by long and persistent effort has been accomplished for you by the noble and opportune gift of Commodore Cornelius Vanderbilt, amounting to \$500,000. This act of unparalleled generosity upon the part of a citizen of New York to our Church commands our esteem and gratitude in an unmeasured degree. The trustees hope to present you a complete building of magnificent proportions by the time of your next Conference session. It is recommended that Drs. Green and Young be appointed to the positions to which they have been elected by the Board of Trust of the university.

“(Signed)

D. C. KELLEY, *Chairman.*”

At the same Conference R. A. Young was made Agent of Vanderbilt University, and A. L. P. Green Treasurer of Vanderbilt University.

3. And thus, by the action above quoted and similar actions by other of the patronizing Conferences, Vanderbilt University was launched by the said Conferences as the members of said corporation and acting as such; and for twenty-five years the Board of Trust and the patronizing Conferences acted in harmony, the Conferences agreeing in almost every instance to every recommendation or request of the Board of Trust, but with no thought upon the part of either the Board of Trust or of the patronizing Conferences that the latter should surrender their rights as members in the corporation; and said rights have not been surrendered.

(a) An instance of the protection of the rights of the Conferences: At the Tennessee Conference, held at Gallatin, Tennessee, October 7-13, 1874, the following resolution, sent up by the Board of Trust of Vanderbilt University, was presented to that Conference for action—to wit:

“NASHVILLE, TENN., September 30, 1874.

“The following resolution, offered by Dr. Garland, was passed by the Board of Trust of Vanderbilt University:

“‘Forasmuch as the charter of the Vanderbilt University confers upon the Board of Trust the exclusive right and power to fill vacancies that may occur in its own body, and as this power cannot be delegated to any other body of persons; therefore, be it

“‘*Resolved*, That this Board will now proceed to fill the vacancy which has been created by the death of the late Dr. Green.

“But in order to maintain the closest connection with the patronizing Conferences the Board submits this and every other election to fill a vacancy in its own body to the confirmation of the Annual Conference from which the election is made.

“‘On motion of Dr. Kelley, the Board entered upon the election of a trustee to fill the vacancy occasioned by the death of Dr. Green. Robert A. Young was elected.’”

To which the Tennessee Conference made reply as follows:

“*Resolved*, 1. That in view of the relations already established by contract between the Tennessee Conference and Vanderbilt University, we proceed now to nominate one of our members to fill the vacancy in the Board of Trust caused by the death of Dr. Green, and that we nominate Dr. R. A. Young.

"2. That, in response to the request of the Board of Trust, we consent to modify the original contract so that hereafter, when a vacancy occurs, the Board may nominate one of our members to us for confirmation, the nominee not to be a member of the Board until confirmed by us."

(b) And at the Memphis Conference, at its session held at Paducah, Kentucky, November 23, 1875, the following was adopted:

"We recognize the hand of God in moving the heart of Mr. Vanderbilt to that noble munificence with which he has blessed our Church and our whole land in what he has done for our university. With the brethren of other Conferences, we have vested rights there which we hold sacred, and will do our part in making it a blessing to the Church, to our children, and to generations yet to come."

(c) And Chancellor Garland reported to the North Mississippi Conference, of which he was a member, at its regular session at Aberdeen, Mississippi, on the 25th of November, 1874, the following:

"We rejoice to look forward to the completion of an institution of high learning, partly under the control of this Conference and entirely under that of the Church. By the magnificent liberality of him whose name it bears, and by the expected liberality of other patrons and friends, we hope, sooner or later, to see this institution so expanded in its organization, so furnished with libraries, cabinets, apparatus, and distinguished lecturers—in short, with every description of educational appliances—that our sons need not go to England or Germany or France for the prosecution of letters, but may find at Vanderbilt facilities for investigation to the utmost extent of human attainment in every branch of learning without detriment to their religious sensibilities."

4. And throughout the meetings, and constantly year by year, almost without exception, the minutes of the Tennessee Conference, the Memphis Conference, the North Mississippi Conference, the North Alabama Conference, the Arkansas Conference, and the Mississippi Conference, and other patronizing Conferences show that Dr. Young, Secretary of the university, regularly appeared before the Conferences, and usually received contributions for the endowment fund. Committees on educa-

tion in almost every instance made a report on Vanderbilt University, and from the foundation of the university to the present time the university has been recognized as a Church institution, commended to the Christian people and to the Church, and patronized and superintended by the patronizing Conferences, and finally turned over to the General Conference, as hereinafter set out; and since that time patronized by all the Conferences and by the General Conference.

VII.

1. At the meeting of the Board of Trust in 1888 the following report was made to the Board:

“Having carefully considered the matter referred to us, your committee respectfully recommends the adoption of the following by-law therein: The Board of Trust shall, after the expiration of the terms of the present members as hereinafter provided, consist of two members, one clerical and one lay, from each of the patronizing Conferences. These shall be divided into four classes, as follows: The members from the Tennessee and North Alabama Conferences shall constitute one class, and their terms of office shall expire in 1890; the members from the Memphis and North Mississippi Conferences shall constitute one class, and their terms of office shall expire in 1892; the members from the Louisville and Little Rock Conferences shall constitute one class, and their terms of office shall expire in 1894; the members from the Arkansas and White River Conferences shall constitute one class, and their terms of office shall expire in 1896.

“At its annual meeting in 1890, and every two years thereafter, the Board shall elect, as now provided by law, subject to the confirmation of the Conference concerned, members to take the places of those whose terms then expire. The members so elected shall hold their office for a term of eight years, unless sooner removed for cause, and until their successors are elected and confirmed. When vacancies shall occur, they shall be filled as now required by law, but only for the remainder of the unexpired term or terms.

“*Resolved*, That the Executive Committee are hereby directed to take steps necessary to make the foregoing a part of the organic law of the university.” (Vol. III, pp. 480, 481.)

From the above it appears that the Board of Trust recognized that in order to make changes as suggested in that report a change was needed in the organic law of the university, and this

resolution of the Board of Trust was submitted to the Annual patronizing Conferences.

2. At the Tennessee Conference of 1888 the following resolutions were adopted:

“VANDERBILT UNIVERSITY.—We find the university in a more prosperous condition in all its departments than it has ever been. There is a large number of students in attendance from different portions of the country

“*Resolved*, 1. That we are in full sympathy with the Theological Department of the university, and that we will do all that we can to advance the interest thereof in every respect.

“2. That we recommend to the Conference the approval of the action of the Board of Trust at its last annual meeting in reference to the election of members of the same as stated in the accompanying paper, which is made a part of this report;

“*Provided*, That the charter of the university be so amended as to secure the right of the several coöperating Conferences to act upon all nominations to fill vacancies before any party nominated by the Board can become a member thereof; and *provided*, also, that no amendment to the charter shall affect the *ex officio* members of the Board.”

3. And to the session held in 1890 of the Tennessee Conference a report was made that the Rev. R. A. Young and E. H. East had been elected at the last annual meeting to the Board of Trust, the report being as follows:

“NASHVILLE, TENN., October 3, 1890.

“*To the Bishop and Members of the Tennessee Annual Conference.*

“*Dear Brethren:* At the last annual meeting of the Board of Trust of Vanderbilt University they began the reduction of that body to one-half its original members.

“Dr. R. A. Young and Hon. E. H. East on the first ballot were elected. You are hereby most respectfully notified of that fact, and requested to confirm their election.

“Yours in Christ, R. A. YOUNG,
“*Secretary Board of Trust, V U.*”

Which was done.

4. At a meeting of the North Mississippi Conference in 1888 the following action was taken:

“VANDERBILT UNIVERSITY.—As one of the patronizing Conferences, we regard the university with generous pride and

recommend concurrence in the recent action of the Board of Trust changing the manner of its organization. We respectfully suggest that the charter be so amended as to secure to the patronizing Conferences, respectively, [the right] to make nominations to fill vacancies in the Board."

5. At the Memphis Annual Conference held in 1888 the following action was taken:

"The Board of Education recommend the adoption of the following resolutions:

"*Resolved*, 1. That Vanderbilt University in its various departments is highly appreciated by us, and especially the Theological Department, and we will do whatever we can to promote its interests.

"*Resolved*, 2. That the Memphis Conference approves and concurs in the action of the Board of Trust at its last annual meeting on the election of members thereof, as set forth in the paper referred to the Board of Education."

"Action of the Board of Trust of Vanderbilt University concerning the reorganization of the Board, taken June 20, 1888, at the regular annual meeting in Nashville, Tennessee:

"The committee on the reorganization of the Board of Trust presented their report, which, after being amended, was adopted as follows:

"**REORGANIZATION OF THE BOARD OF TRUST.**—Having carefully considered the matter referred to us, your committee respectfully recommend the adoption of the following by-law in lieu of the one now in force covering the subject-matter embraced therein:

"The Board of Trust shall, after the expiration of the terms of the present members, as hereinafter provided, consist of two members, one clerical and one lay, from each of the patronizing Conferences. These shall be divided into four classes, as follows: The members from the Tennessee and North Alabama Conferences shall constitute one class, and their terms of office shall expire in 1890; the members from the Memphis and the North Mississippi Conferences shall constitute one class, and their terms of office shall expire in 1892; the members from the Louisville and the Little Rock Conferences shall constitute one class, and their terms of office shall expire in 1894; the members from the Arkansas and the White River Conferences shall constitute one class, and their terms of office shall expire in 1896.

“ ‘At its annual meeting in 1890, and every two years thereafter, the Board shall elect, as now provided by law, subject to the confirmation of the Conferences concerned, members to take the places of those whose terms then expire. The members so elected shall hold their offices for a term of eight years, unless sooner removed for cause, and until their successors are elected and confirmed.

“ ‘When vacancies occur, they shall be filled as now required by law, but only for the remainder of the unexpired term or terms.

“ ‘*Resolved*, That the Executive Committee are hereby directed to take all necessary steps to make the foregoing a part of the organic law of the university.

“ ‘E. H. EAST,

“ ‘J. W. STAYTON,

“ ‘W. F. BARCLAY,

“ ‘*Committee.*

“ ‘CERTIFICATE.

“ ‘The above is a true copy from the minutes of the of Vanderbilt University. ROBERT A. YOUNG, *Secretary.*’

“ Resolved, 3. That the Memphis Conference favors the amendment of the charter of the university in accordance with the foregoing action of the Board of Trust, and especially to secure the right of the several Annual Conferences interested in the university to act upon all the nominations made by the Board of Trust to fill vacancies before any person so nominated can become a member thereof. *Provided*, that *ex officio* members of the Board be not affected by any amendment of the charter.

“ ‘Respectfully submitted,

“ ‘H. J. TURNER, *Chairman*;

“ ‘W. L. McDONALD, *Secretary.*’ ”

And the said action of the Board of Trust was acquiesced in by the Conferences as members of the corporation.

6. As an instance of how the members of the Board of Trust were selected, the following appears in the minutes of the Tennessee Conference, held at Lebanon, Tennessee, October 18–24, 1893, Bishop John C. Keener presiding:

“ ‘Dr. J. H. Kirkland, Chancellor of Vanderbilt University, addressed the Conference on the interests of that institution.’ ”

Also on page 159 of the same Journal occurs this item :

“A communication from the Board of Trust of Vanderbilt University was read and referred to the Board of Education.”

Also on page 172 of same Journal :

“Vanderbilt Committees: Vanderbilt Biblical Department, A. P. McFerrin, J. T. Curry, W. H. Cotton.”

Also on page 307 of the same Journal occurs Report No. 1 of the Board of Education, which was adopted :

“REPORT No. 1.

“The following report was referred to your Board :

“*‘To the Bishops and Members of the Tennessee Conference:*

“‘At the last annual meeting of the Board of Trust of Vanderbilt University, Dr. James Hampton Kirkland was elected a member thereof. It now becomes our duty to ask the Tennessee Conference to ratify the election of Dr. Kirkland.

R. A. YOUNG,

“*‘Sec. Board of Trust Vanderbilt University.’*

“We recommend to you the ratification of Dr. James H. Kirkland’s election to membership in the Board of Trust of Vanderbilt University.”

And in 1895 the Bishops and Chancellor of the university being made members *ex officio* of the Board of Trust, at the session of the Tennessee Conference, held at Winchester, Tennessee, October 23–28, the report of the Board of Education, which was adopted by the Conference, contained, among other things, the following :

“The resignation of J. H. Kirkland, lay representative of this Conference on the Board of Trust of Vanderbilt University, having been reported to us, the following resolution was adopted :

“*‘Resolved, That we recommend the Conference to fill the vacancy on the Vanderbilt Board of Trust occasioned by the resignation of J. H. Kirkland by the election of E. W. Cole to represent the Tennessee Conference on the said Board of Trust.’*”

And thereupon the following action was taken by the Conference: E. W. Cole was elected to fill the vacancy on the Board of Trust of Vanderbilt University made vacant by the resignation of J. H. Kirkland.

VIII.

1. The growth of the university was rapid, and soon it was desired that other Conferences should be admitted to membership of the corporation as was provided for in the Memphis resolution. Both the Church and the Board of Trust desired the university to become the central university of Southern Methodism, and for it to become related in a connectional way with the entire Church, instead of with the patronizing Conferences, and it was determined by all parties that this could be effectuated by having the university related to the General Conference, and thus through the General Conference all the Annual Conferences could become patrons, in law as in fact, of the university. The Board of Trust as early as 1896 took steps to bring about the succeeding by the General Conference to membership in the corporation theretofore held and enjoyed by the patronizing Conferences.

2. At the meeting of the Board of Trust held in 1896 the following report was presented by Bishop Hendrix and Chancellor Kirkland—to wit:

“Your committee to whom was referred the question as to a change in the manner of electing trustees beg leave to report:

“‘I. We think it very important that Vanderbilt University should be closely allied to the whole Church as the central university of Southern Methodism.

“‘II. We believe this can be partially effected by increasing the number of trustees who are elected independently of our eight patronizing Conferences.

“‘III. We recommend that the by-laws be amended so as to give only one representative to each of the eight patronizing Conferences, and that the eight vacancies thus created be filled by the selection of representative men without geographical limitation.

“‘IV. As the best method of effecting this result, we suggest that each patronizing Conference be requested to approve this change in the by-laws and adopt the reduction from two to one representative.’”

3. Again in 1897 the following report was made to the Board of Trust:

“We recommend that in order that Vanderbilt University may be related to the Church as the central university of Southern Methodism and may assume a connectional relationship to the whole Church as the crowning feature of our educational system, the consent of the patronizing Conferences be asked to the proposition that hereafter the Board of Trustees be selected from the entire Church, without regard to geographical limitation, and to be confirmed by the General Conference. In order to secure such consent the Chancellor of the University is requested to submit this proposition to the several patronizing Conferences at the next annual sessions. We further suggest that a resolution be submitted to the next General Conference asking the adoption of this university as the central institution of the Methodist Episcopal Church, South.” (Vol. V, Records of Board of Trust, p. 168.)

4. The action recommended by the above report was adopted by the Board of Trust, and the Chancellor of the university or some other representative of the Board of Trust appeared before the patronizing Conferences (which was a recognition of these Conferences as the members of the corporation), and requested action by the said patronizing Conferences in line with the above resolution; and the patronizing Conferences in the fall of 1897, with the exception of the Louisville Conference and the Tennessee Conference, assented to this arrangement, and in the fall of 1898 both the Louisville and Tennessee Conferences concurred therein.

(a) At the meeting of the Tennessee Conference held in 1897 a full report of the relation of Vanderbilt University to the patronizing Conferences was made, and the following resolution was adopted in reply to the request of the Board as set forth in Paragraph 3 of this section—to wit:

“*Resolved*, That the time has fully come when the control and ownership of Vanderbilt University should be in the General Conference, and that to this end we declare our willingness to transfer to that body all rights, title, and interest we have in said university, and hereby solicit the coöperation of all Conferences concerned and the Board of Trust in securing this desirable end.

“2. That until this is accomplished we adhere to the status secured to us by contract, which gives us a controlling voice in the appointment of our representatives on the Board of Trust.”

(b) And the Memphis Conference, at its annual session held on November 17–22, 1897, adopted the following resolution :

“We have considered the resolution in reference to the transfer of the control of the Vanderbilt University to the General Conference. We recommend the action of the last Tennessee Conference, embodied in the following resolution :”

(The same resolutions were set out which were adopted at the Tennessee Conference and contained in the preceding paragraph.)

(c) The White River Conference adopted a similar resolution.

(d) Chancellor Kirkland, of Vanderbilt University, reported at the annual meeting of the North Alabama Conference, held at Florence, Alabama, on the 3d day of December, 1897, and the following resolution was passed :

“*Resolved*, That the time has come when the control and ownership of the Vanderbilt University should be in the General Conference, and to this end we express our willingness to transfer all rights, titles, and interest we have in said university.”

(e) The Little Rock Conference adopted the same resolution as that adopted by the Tennessee Conference above set out.

(f) The Louisville Conference did not approve this at its meeting in 1897. At the fifty-third session of the Conference, held at Chestnut Street Methodist Episcopal Church, South, Louisville, September 21–27, 1898, the following resolution was adopted :

“At the last session of our Conference your Educational Board had under consideration a memorial from the Board of Trust of Vanderbilt University, requesting our approval and indorsement of the plan to transfer the management of the university from the eight patronizing Conferences to the General Conference, so that in future the trustees would be selected from the Church at large without reference to any particular Conference, and so that the ratification of the trustees thus selected should be by the General Conference in lieu of the Annual Conference. To this memorial we made the following reply :

“ ‘We have carefully considered the memorial from the Board of Trust of Vanderbilt University, and regard the

proposed change in character as far too sweeping and radical. We therefore think it best to defer action for the present on this memorial, and so recommend.'

"It now appears that all the patronizing Conferences except the Louisville have recommended the proposed change in the charter, and the General Conference has accepted the proposition to take charge of the university so soon as all the Conferences shall transfer their rights to it. The Board of Trust await the final action of the Conference to make the transfer.

"Your Educational Board has therefore reviewed the case carefully, and herewith submit the following:

"We cannot fully concur with the majority as to the wisdom of the proposed change. We believe the present basis of representation, giving one trustee to each of the patronizing Conferences, and a limited number elected from the Church at large, and the entire College of Bishops made *bona fide* members of the Board, guarantees not only to the entire Church, but to the outside world, all the benefits and advantages of the institution.

"We think it a doubtful experiment to transfer so valuable interests, in which we now have secured to us the very best collegiate advantages, to other hands, from whom we have no assurance that these advantages shall be perpetuated.

"When we were admitted to the list of patronizing Conferences it was understood that the college department of the university should become our college, and with this understanding, encouraged by those in authority, we have projected our educational system on the training school idea, to fit our boys for this higher college, rather than undertake to establish a Conference college.

"We do not think such radical change as here intimated is probable in the near future, but it is a possibility, and, indeed, some of the Conferences which have their individual colleges to care for have among them earnest advocates of a speedily disposed-of college work in this university.

"However, with all the difficulties confronting us, it does not seem proper that our Conference should stand alone in opposition to the proposed change, but rather yield to the wishes of the majority.

"With this explanation, therefore, we recommend the adoption of the resolution offered by Gross Alexander and R. W. Browder, which was referred to this Board on Saturday, and is as follows:

"*Resolved*, That the Louisville Conference approve the action taken by the late General Conference concerning the relation of Vanderbilt University to the Church, and we hereby transfer our rights in Vanderbilt University to the General Conference of the M. E. Church, South.'

“We also recommend that the Secretary of this Conference furnish a copy of this paper to the Board of Trust of Vanderbilt University to be placed on its records, that its members may always understand the wish of the Conference as regards the perpetuity of the college department.”

IX.

1. At the session of the General Conference of the Methodist Episcopal Church, South, held in Baltimore in May, 1898, a committee of the Board of Trust of the Vanderbilt University, appointed in accordance with the resolution hereinbefore quoted, presented to the General Conference the following memorial:

“To the General Conference of the Methodist Episcopal Church, South, in session in Baltimore, May, 1898:

“The undersigned, constituting a committee appointed by the Board of Trust of Vanderbilt University to make a special report to the General Conference of the M. E. Church, South, beg leave to present this communication with reference to the university and its relation to the whole Church. Vanderbilt University, as is well known, has heretofore been the central institution of eight patronizing Conferences. The title to the property is vested in a Board, to be held in trust for these Conferences of the Methodist Episcopal Church, South. For several years the Board has had under consideration a plan to make the university entirely connectional and relate it directly to the whole Church. The plan proposed is to have the patronizing Conferences transfer their rights in the university to the General Conference, and to have the General Conference by proper resolution accept the patronage of the university and consent to assume toward this enterprise the same relation heretofore held by the separate Conferences. The Board of Trust has officially expressed its approval of this plan, and most of the patronizing Conferences have done the same thing.

“By the charter of the University the Board of Trust is vested with the power and obligation to fill its own vacancies; but the election of any member is not valid under the law of the university until said member has been confirmed by the Conference which he is designed to represent. Under the new plan the Board would be at liberty to select its members without geographical restrictions of any kind, and the General Conference would confirm or reject the appointment. This duty could be exercised either by the General Conference as a body, or it could be delegated by the Conference to some Board, itself the creature of the General Conference. Naturally the Board of Education

will be thought of in this connection. This Board meets every year, and is likely to be charged more and more with the oversight of our institutions of learning. It is now trying to devise methods for correlating all our colleges and universities, and it would be appropriate for the General Conference to exercise its control of Vanderbilt University largely through the Board. In that manner vacancies in the Board of Trust of the University could be filled every year, and it would not be necessary to wait four years for action that might be promptly needed.

“As a committee, therefore, of the Board of Trust of Vanderbilt University, we beg to present this matter to the General Conference, and invite such action as may be adjudged right and proper.

“(Signed)

“A. W. WILSON,
“CHARLES B. GALLOWAY,
“EUGENE R. HENDRIX.”

2. And at said session of the General Conference it accepted the proposed relation and control of Vanderbilt University, and the patronizing Conferences having assented thereto and transferred to it their membership in the corporation, the General Conference of the Methodist Episcopal Church, South, became the member of this corporation. The action of the General Conference was embodied in the following resolution :

“First. That the General Conference of the M. E. Church, South, hereby accepts the proposed relation and control of the Vanderbilt University and commits to the General Board of Education the confirmation of all trustees selected by the Board of Trust of Vanderbilt University.

“Second. That this resolution take effect as soon as the consent of all the present patronizing Conferences has been obtained, all the necessary legal steps taken, and preliminary details arranged.”

X.

1. By the action of the patronizing Conferences in transferring their rights as members in the university to the General Conference, and the latter's acceptance of the same and “the control” of the university—which was done at the request of the Board of Trust—the General Conference, the law-making body of the Methodist Episcopal Church, South, became the member of Vanderbilt University and exercised its rights to confirm the

nominations of the Board of Trust, and did so confirm them up to 1910, acting through the General Board of Education of the Church. Thus from the founding of the university up to the present year the authority of the Church and its ownership of the university, either by the Annual and patronizing Conferences or by the General Conference, has always been recognized by the Board of Trust; and the Church, either a part of it as represented by the patronizing Annual Conferences or the whole by the General Conference exercising the right of member, has either nominated or confirmed the members of the Board of Trust.

XI.

In addition to the membership of the patronizing Conferences in the corporation, the founders of the university vested in the Bishops of the Methodist Episcopal Church, South, visitorial power, and this was done by the 9th paragraph of the Memphis resolutions. However, it was not deemed necessary by the Bishops to exercise their power as visitors until the year 1910, and until the action of the Board of Trust on June 11 and 12 of that year as herein set out.

XII.

1. Prior to 1894 there had been some doubt upon the part of the College of Bishops of the Methodist Episcopal Church, South, and of the Board of Trust as to whether the Bishops were members of the Board of Trust *ex officio* and so made by the charter, and whether the Board of Trust as constituted by the charter was composed of the members as elected or confirmed by the patronizing Conferences and the College of Bishops jointly. And in order to settle any doubt upon this subject and to admit the Bishops to what was then regarded by the then existing Board of Trust as their charter rights, the following by-law was adopted:

“Each of the Bishops of the Methodist Episcopal Church, South, is *ex officio* declared to be a member of the Board of Trust, and the Chancellor of the university is also by his office a member of said Board of Trust.”

2. Subsequent to the adoption of said by-law the Bishops of the Methodist Church were recognized by the Board of Trust by virtue of their positions as Bishops under the charter of the institution as *ex officio* members of the Board of Trust, and continued to be so recognized and to so act until the annual meeting of the Board of Trust in 1905, when by resolution the above-quoted by-law was rescinded, and five of the effective Bishops of said Church chosen in order of seniority were nominated to the Board of Education of the Methodist Church for confirmation as members of the Board of Trust.

3. To this meeting in 1905 the Chancellor submitted a report advising that a new charter of the institution be procured. That part of the report pertaining to the charter of Vanderbilt University and to the relation of Conferences thereto, and setting out the reasons why a new charter was desirable, is attached hereto and made a part of this bill, marked as Exhibit "C," but need not be copied unless called for. The part of the report attached hereto as Exhibit "C" was by the Board of Trust referred to a committee of its own members, and that committee reported back to the Board of Trust as follows:

"Your committee to whom was referred that part of the Chancellor's report relating to the charter of Vanderbilt University, after taking legal advice and having also the counsel of Bishop A. W. Wilson, who has given much thought to the matter, unanimously recommend that the Executive Committee be authorized to get the signatures of all the members of the Board of Trust to the form of application provided by the laws of Tennessee, and to file said application with the Secretary of State for the desired amendment to the charter.

"To give full membership in the Board of Trust to some who are *ex officio* members, we recommend the adoption of the following resolutions:

"*Resolved*, That we hereby rescind the by-law making the Chancellor of Vanderbilt University *ex officio* a member of the Board of Trust, and the Bishops of the Methodist Episcopal Church, South, *ex officio* members of said Board.

"*Resolved*, That we hereby nominate to the Board of Education of the Methodist Episcopal Church, South, for confirmation as members of the Board of Trust, the Chancellor of Vanderbilt University and five of the effective Bishops of said Church, chosen in the order of seniority, and that the Chancellor be placed in that class of members whose terms expire in 1914, and that the Bishops be distributed according to seniority in the

classes whose terms expire, respectively, in 1914, 1912, 1910, 1908, 1906.

“Respectfully submitted.

“(Signed)

“E. R. HENDRIX,

“W. C. RATCLIFFE,

“W. W. DUNCAN,

“J. H. KIRKLAND,

“CHARLES B. GALLOWAY.”

XIII.

1. After the action was taken by the Board of Trust as above set out, certain of the patronizing Conferences memorialized the General Conference to be held in Birmingham in 1906 to consider and act upon all matters involving the ownership and control of Vanderbilt University, and especially to direct what changes, if any, should be made in the terms of the original charter, and, in general, to set in motion such plans as would more perfectly conserve the interests of the Church and rally the Church more heartily and fully to the support of the university.

2. Likewise the university Board of Trust was requested to withhold action upon the application for an amended charter until after a meeting of the General Conference at Birmingham in 1906. As a result of the action taken by the patronizing Conferences, the General Conference of the Methodist Episcopal Church, South, held at Birmingham, Alabama, in 1906, adopted the following resolutions:

“There can be no question as to the ownership of the university by the Methodist Episcopal Church, South, or as to the charter rights of all the Bishops; but in view of certain questions which must be authoritatively decided, we recommend the appointment by this General Conference of a commission of five laymen of the Methodist Episcopal Church, South, as follows:

“1. To inquire into and determine the present relations of the Vanderbilt University to the Methodist Episcopal Church, South.

“2. To take legal steps, if necessary, to perfect the transfer of the university from the patronizing Conferences to the General Conference of the Methodist Episcopal Church, South.

“3. To define the charter rights of the Bishops of the Methodist Episcopal Church, South; and when so defined, the Bishops are hereby instructed to enter on the same.

"4. We recommend that this commission be composed of the following gentlemen: Judge Edward O'Rear, Frankfort, Ky.; Judge John A. Rich, Slater, Mo.; Judge E. D. Newman, Woodstock, Va.; Judge Joseph A. McCulloch, Greenville, S. C.; and Hon. Creed Fulton Bates, Chattanooga, Tenn. This commission shall have power to fill any vacancy in its membership.

"5. This commission is instructed to proceed in this matter as early as possible, and they shall communicate the result of their deliberations simultaneously to the College of Bishops, the Board of Trust of the Vanderbilt University, and the General Board of Education.

"6. The General Secretary of the Board of Education shall act as secretary of this commission to notify its members of their appointment, to conduct all necessary correspondence, and to gather all available data bearing upon the above matters.

"7. We recommend that the expenses of the commission be paid by the General Board of Education.

"Touching the memorial from the Tennessee Conference, which requested the General Conference to inquire into the status of the proposed charter and to counsel with the Board of Trust thereon, we report that we have been informed by the representatives of the Board of Trust: 'No action for amending the charter is pending, and that nothing can be done at any time in the future without the unanimous consent of the members of the Board.' We recommend in case of any future charter or amendment that the present existing rights of the Methodist Episcopal Church, South, and the Bishops thereof be preserved.

"Respectfully submitted.

"R. G. WATERHOUSE, *Chairman*;

"JOHN M. MOORE, *Secretary*."

In accordance with said resolution, the members requested to act upon said commission by the fourth section of said resolution agreed to act, and met at Nashville, Tennessee, on August 15, 1906, and later in the same city on October 24-29, inclusive. This committee diligently examined into the several matters committed to them, and before them appeared representatives of the Board of Trust, of the Church, and of the College of Bishops, in person and by counsel. Evidence was heard, documents were submitted, and, after due consideration, the commission filed on December 4, 1906, its report determining:

(a) That Vanderbilt University was established and is being managed by the patronizing Conferences of the Methodist Episcopal Church, South, up to 1898; that up to said date said patronizing Conferences were the members of the corporation;

held the right to select its trustees and control its polity so long as it regards the purpose of the trust and violates no condition imposed by any donor.

(b) That no further action was necessary to transfer the rights of the patronizing Conferences to the General Conference, which had become, and was, the successor to the rights of the patronizing Conferences; but in order that formal recognition of this transfer might be made, and that the said patronizing Conferences might take such steps as would forever quiet the right and title of the General Conference of the Methodist Episcopal Church, South, to act as the member of said corporation, they recommend the adoption of the following resolution:

“Whereas, By resolution prior to the General Conference of the Methodist Episcopal Church, South, of 1898, this Conference memorialized the General Conference to take over the charge of the responsibility of Vanderbilt University; and

“Whereas, The said General Conference has agreed to do so and has done so, which has been approved by the assent of this Conference;

“Now, to confirm the original purpose of this Conference and to unify the title in the General Conference of the Methodist Episcopal Church, South; be it

“*Resolved*, That this Conference do now cede, and there is hereby ceded, to the General Conference of the Methodist Episcopal Church, South, all rights, privileges, and authority which this Conference had as a member of the corporation known as Vanderbilt University.”

(c) Determined that the Bishops of the Methodist Episcopal Church, South, were, by the action of the founders—to wit, the patronizing Conferences and the Memphis convention—made common-law visitors of the university, defining their duties to be judicial, not executive or legislative. They are “to judge whether the acts of the trustees are within the law of the institution, and whether their by-laws are in the spirit of the trust.” The visitor is in no sense above the law of the institution, but his judgment within the law is necessarily supreme.

XIV

1. This finding by the commissioners was acquiesced in by the patronizing Conferences, all of which adopted a resolution in conformity with the one above set out.

XV

1. The Board of Trust of the Vanderbilt University, upon receiving the report of the commission, accepted the same and acquiesced therein, enacting the following resolutions:

“Whereas, The general Conference of the Methodist Episcopal Church, South, in session at Birmingham, Alabama, May, 1906, appointed a commission to report upon the following matters:

“1. To inquire into and determine the present relations of the Vanderbilt University to the Methodist Episcopal Church, South;

“2. To take legal steps, if necessary, to perfect the transfer of the university from the patronizing Conferences to the General Conference of the Methodist Episcopal Church, South;

“3. To define the charter rights of the Bishops of the Methodist Episcopal Church, South;

“And, whereas, the commission has concluded its labors and reported the result of its deliberations to the Board of Trust of Vanderbilt University;

“*Resolved*, 1. That we cordially receive the same, and direct that it be filed with the records of this Board.

“2. That we hereby express our appreciation of the ability and fidelity with which the members of the commission have discharged their important duties.

“3. That, recognizing and rejoicing in the ownership of the Church in the university and all the responsibilities arising therefrom, we welcome any supervision by the College of Bishops that may aid us in executing the great trust committed to our hands so as to insure the observance of the charter, the conditions of specific gifts, and the statutes of the State.”

XVI.

The report of the Vanderbilt Commission was likewise presented to the General Conference of the Methodist Episcopal Church, South, at its meeting at Asheville, North Carolina, in May, 1910, and the said Conference took the following action thereon:

“*Resolved*, first, That this General Conference hereby accepts the report of the Vanderbilt Commission as a definition of the rights of the Methodist Episcopal Church, South, to Vanderbilt University; moreover, that it accepts the judgment of the Commission that the College of Bishops is a Board of Common-Law

Visitors of the university; and, furthermore, that it accepts the finding of the Commission that the General Conference has the right to select the Board of Trustees in such manner as it may elect, either by direct election by the Conference itself or through such agency or agencies as it may designate.

“Resolved, second, That it is the sense of this General Conference that its right to select the Board of Trust of Vanderbilt University and fill vacancies in the same now be exercised, and hereafter at its discretion; and it being ascertained that vacancies now exist in the Board of Trust of said university, the following-named members of the Methodist Episcopal Church, South, are hereby elected to fill said vacancies—namely:

“Resolved, third, That following this election the General Conference will for the future continue the method of choosing the trustees adopted by the General Conference held at Baltimore in 1898, when it committed ‘to the General Board of Education the confirmation of all trustees by the Board of Trust of Vanderbilt University.’

“Resolved, fourth, That the General Conference approves the action of the Bishops in entering upon the discharge of their duties as visitors of the university.

“Resolved, fifth, That the General Conference approves as a sound principle of law the position of the College of Bishops, namely, that ‘it is not competent for the Board of Education to delegate the function intrusted to it by this General Conference to any other body or person whatsoever;’ and the General Board of Education is hereby instructed to accede to the request of the Bishops—namely, that hereafter said Board will confirm no persons as trustees of Vanderbilt University except such as may be officially nominated to the Board of Education of the Methodist Episcopal Church, South, in writing by the Board of Trust of Vanderbilt University.

“Resolved, sixth, That the Board of Education of the Methodist Episcopal Church, South, shall provide whatever means may be necessary to sustain the finding of the Vanderbilt Commission if it shall at any time be called in question in the civil courts. In such event the Bishops of the Church are hereby instructed to take whatever steps they may deem necessary to maintain the rights and claims of the Church.”

XVII.

At that time there existed three vacancies in the Board of Trust—one occasioned by the death of Mr. Samuel J. Keith, on July 17, 1909; one by the death of Bishop Seth Ward, and one occasioned by the death of Mr. John B. Ransom—and to fill

these vacancies the General Conference elected your relators, V A. Godbey, of Austin, Texas; N. E. Harris, of Macon, Georgia; and Albert W Biggs, of Memphis, Tennessee; and their election was duly certified to said Board. All the above parties accepted the election as made by the General Conference, and Messrs. Harris and Godbey in person presented their credentials of election, and at the same time presented the credentials of Mr. Biggs to the Board of Trust at its meeting in June, 1910.

XVIII.

1. The Board of Trust at its meeting held on June 11 and 12, 1910, declined to receive said members so elected by the General Conference, and in lieu thereof attempted to elect the following members—to wit: the defendants, Claude Waller, of Nashville, Tennessee; Robert F. Jackson, of Nashville, Tennessee; and James A. Robins, of McKenzie, Tennessee.

2. Immediately upon said attempted election of said members, they and others of said Board of Trust rescinded the by-law adopted in 1898 and assented to by the General Conference in 1898, requiring the confirmation of all selections of members of the Board of Trust by the Board of Education of the Methodist Episcopal Church, South, the action of the Board of Trust being indicated by the following resolution:

“Whereas, The General Conference of the Methodist Episcopal Church, South, at its recent session at Asheville, North Carolina, selected three members to act as members of the Board of Trust of Vanderbilt University; and

“Whereas, Some of these gentlemen are now present presumably claiming membership in this Board; and

“Whereas, It is the duty of the Board itself to determine the question as to the rights of these gentlemen to sit as members; therefore, be it

“*Resolved*, That the Chair appoint a committee of seven to investigate the subject and make its report tomorrow morning at 9.30 o'clock, with recommendations as to the proper mode of procedure.”

3. The committee appointed in pursuance of the above resolution made the following report:

“Your committee assembled, heard full statements from Messrs. N. E. Harris and V A. Godbey, and gave a careful con-

sideration to the whole subject. The majority of the committee now report as follows:

“ ‘We are of the opinion that the General Conference acted without lawful authority when it undertook to elect members to fill vacancies existing on the Board of Trust.

“ ‘We are further of the opinion that it is the duty of the present members of this Board by election to fill all vacancies thereon which may now exist, or which are about to occur by the expiration of terms of service; and that the parties so elected, upon acceptance, will thereupon become members of the Board without more. We therefore recommend:

“ ‘(1) That the by-law of 1906 concerning the mode of election of trustees and their confirmation be amended so that it shall read as follows:

“ ‘ ‘ ‘All vacancies on the Board of Trust shall be filled by the election of the Board. The term of members shall be for eight years, unless sooner removed for cause, but all members shall serve until their successors are elected.”

“ ‘(2) That the Board proceed to elect members to fill the vacancies now existing, and also those which are about to occur by the expiration of the terms of office.’

“Respectfully submitted.

“(Signed)

“W. T. SANDERS, *Chairman*;

“W. L. MOOSE, *Secretary*;

“ELLIOT H. JONES,

“J. C. McREYNOLDS,

“CHARLES N. BURCH,

“W. C. RATCLIFFE.

“The above was adopted by a rising vote of 19 to 8.”

4. In accordance with said action so taken, the said defendants Claude Waller, Robert F. Jackson, and James A. Robins, are undertaking to act as and claiming to be members of the Board of Trust of the defendant Vanderbilt University, but, as your relators are informed, their claim is without legal right.

5. In addition to attempting to elect the above members of the Board of Trust, the said Board proceeded also to attempt to fill the vacancy caused by the resignation of Bishop A. W. Wilson by the election of Bishop W. B. Murrah; and added also to the Board of Trust by the attempted election of Bishop W. R. Lambuth; and relators aver that the said W. B. Murrah and W. R. Lambuth denied the right of said Board of Trust to elect

them as members, and have declined to serve as such, and have communicated their said declination to serve to said Board of Trust.

6. The action of the Board of Trust of Vanderbilt University as above set out was taken by a vote of 19 to 8, and relators aver that the following members of the Board of Trust voted in the affirmative upon said action—to wit: Bishop E. R. Hendrix, Mr. Allen R. Carter, Judge W. C. Ratcliffe, Mr. Samuel Cupples, Mr. William L. Moose, Mr. W. T. Sanders, Prof. William Hughes, Chancellor J. H. Kirkland, Mr. W. R. Cole, Mr. G. M. Neely, Rev. G. B. Winton, D.D., Hon. Charles N. Burch, Mr. Robert F. Maddox, Rev. C. W. Byrd, D.D., Mr. James C. McReynolds, Mr. Eugene J. Buffington, Mr. Nathaniel Baxter, Col. G. W. Martin, and Mr. Elliott H. Jones. While the following voted “No:” Bishop A. W. Wilson, Mr. John R. Pepper, Maj. R. W. Millsaps, Rev. E. B. Chappell, D.D., Rev. W. J. Young, D.D., Rev. R. W. Browder, Rev. W. D. Bradfield, D.D., and Rev. J. H. Dye, D.D.

XIX.

1. In addition to the action as above set out, the Board of Trust, at its meeting in Nashville in June, 1910, voted to table the following resolution:

“The right of the General Conference of the Methodist Episcopal Church, South, to appoint the trustees of this university being denied by this Board of Trustees, great unrest is likely to follow to the damage of the university and the Church. To allay as much as possible this unrest and to guard as far as possible the interests of the university, this Board hereby declares the trust it holds is a trust for the Methodist Episcopal Church, South, and that Vanderbilt University belongs to said Church.”

XX.

After the foregoing action was taken by a majority of the Board of Trust, the College of Bishops of the Methodist Episcopal Church, South, met at Nashville, Tennessee, on the 12th day of July, 1910, meeting as visitors of the university. At that meeting all of the members of the College of Bishops were present except Bishops Kilgo and Lambuth; and considering the action

of the Board of Trust in declining to recognize the trustees as elected by the General Conference, and their further action in proceeding to elect members of the Board of Trust without reference to, and independent of, the Methodist Episcopal Church, South, and of its General Conference, and in tabling the resolution set out in the preceding paragraph, as a departure by the Board of Trust from the charter, the fundamental law of the university, the said visitors so determined and adopted the following resolution, to wit:

“In view of the action of the Board of Trust of Vanderbilt University in refusing to allow three trustees elected by the General Conference to take their seats in the Board, and in view of the further action of said Board in assuming to fill the vacancies in the Board without confirmation by the Board of Education, as ordered by the General Conference; therefore be it

“*Resolved*, 1. That the General Conference has the legal right to elect the trustees of the Vanderbilt University or to determine how they shall be chosen.

“2. That trustees duly elected by the General Conference are entitled to their seats in the Board.

“3. That the eight persons whom the Board of Trust assumed to elect to membership in the Board at its meeting in June last, not having been chosen as the General Conference directed, are not trustees, and cannot lawfully exercise the functions of trustees.

“4. That as the Board of Trust assumed to put into the membership of the Board eight persons who are not legally elected trustees, the Board of Trust as thus constituted is not a lawfully constituted body, and its attempted control and direction of the affairs of the university brings into that body an alien influence, inconsistent with the lawful discharge of the duties of the Board.

“Therefore, the Bishops of the Methodist Episcopal Church, South, acting as a Board of Visitors and as representatives of the General Conference of the Church, refuse to approve the action of the Board of Trustees, and declare it null and void.”

XXI.

Relators, the Bishops of the Methodist Episcopal Church, South, now charge that the acts of a majority of the Board of Trust as above set out are *ultra vires* the power of said Board, and contrary, as they are advised, to the charter and fundamental law of the corporation. They charge that by its action

as aforesaid the Board has violated its trust and repudiated the right of the patronizing Conferences as the first members of the corporation, and the right of the Methodist Episcopal Church, South, as represented by its General Conference, as their successor, and has attempted to set itself up as above the charter and the law. They charge that the Board in assuming the authority to elect its own successors has usurped the right of the General Conference as the member of said corporation, and has assumed the said membership to be in the present trustees, who are now claiming that they are a self-perpetuating body. That by said action in asserting its right to self-perpetuation it has attempted to sever all bonds connecting it with the Church. As visitors, relators declare that the aforesaid action upon the part of the Board of Trust is illegal and that they have so adjudged and declared.

XXII.

1. Relators Harris, Godbey, and Biggs state unto Your Honor that by virtue of the action of the General Conference of the Methodist Episcopal Church, South, held at Asheville, North Carolina, in May, 1910, they were elected as members of the Board of Trust of Vanderbilt University; that they accepted the said election; that the defendants, a majority of the Board of Trust hereinbefore named, by their said action, taken at Nashville, Tennessee, on the 11th and 12th days of June, 1910, in declining to accept their credentials and permit them to act as members of said Board of Trust illegally deprived your relators, who were vested with the title to said office, from exercising the duties thereof, and thus deprived them of the honors and emoluments of the same, contrary to the fundamental law of the institution, the statutes of Tennessee, and equity and good conscience.

2. Relators further show that the defendants Waller, Jackson, and Robins are now usurping the offices to which these relators were elected, and these relators by the usurpation of the aforesaid defendants, who, contrary to law and good conscience, are usurping the said offices, are deprived of the honors and emoluments of the same to their very great injury and damage.

XXIII.

1. That Vanderbilt University, as appears from the foregoing, was established by and is being maintained and patronized by the Methodist Episcopal Church, South, as hereinbefore set out, the General Conference of which is the general legislative body of said Church; and that the Church at large is now maintaining and patronizing the said Vanderbilt University, and the General Conference, as the representative governing body of the Methodist Episcopal Church, South, by virtue of being the member of said corporation, as well as by virtue of the fact that the said Vanderbilt University was established by and is now being maintained and patronized by the said Church, has the power and authority at its option to elect the Board of Trustees and to fill vacancies thereon; and the said General Conference of the Methodist Episcopal Church, South, as such governing body of said Church, did, as herein set out, at its meeting at Asheville, North Carolina, in May, 1910, determine to and did elect the relators, Harris, Godbey, and Biggs, to fill the vacancies occurring in said Board of Trust of Vanderbilt University by the death of Samuel J. Keith, Bishop Seth Ward, and John B. Ransom.

2. Your relators further state that large sums of money have been donated by Methodists to Central University of the Methodist Episcopal Church, South, and to Vanderbilt University, because said university was established by and has been maintained by said Church. Among others being the following:

(a) Citizens of Nashville, most of whom were Methodists, in a meeting gotten up by Methodists, raised the first money, amounting to about \$27,000, which was used to purchase the grounds upon which the university buildings were built and upon which they now stand.

(b) The financial agents of Central University of the Methodist Episcopal Church, South, made canvasses of all the patronizing Conferences, visited and delivered addresses at several of the Annual Conferences of each of said patronizing Conferences, and at most of them received liberal contributions to the university enterprise.

(c) That contributions, as relators are informed, represented by notes amounting to over \$100,000, were obtained to

Central University of the Methodist Episcopal Church, South. Practically all of these notes were obtained from Methodists.

(*d*) The donation made by Commodore Vanderbilt was obtained through the influence of Bishop McTyeire and his wife, Mrs. McTyeire, likewise a Methodist. Mrs. McTyeire was a relative of Mrs. Vanderbilt, a Methodist, and through the combined influence of Bishop and Mrs. McTyeire the interest of Commodore Vanderbilt in the Central University of the Methodist Episcopal Church, South, was enlisted, which, as above stated, resulted in his first donation of \$500,000. This was subsequently increased, through Bishop McTyeire's influence, to \$600,000.

(*e*) After the name of the Central University of the Methodist Episcopal Church, South, was changed to Vanderbilt University, two Methodists, Dr. R. A. Young and Dr. A. L. P. Green, continued to act as the Financial Agents of the university, visiting the various Annual Conferences and interesting Methodists throughout the Southern Church in the university, asking and receiving donations from them to Vanderbilt University upon the ground that it was a Methodist university and was the property of and controlled by the several Conferences of the Methodist Episcopal Church, South.

When Dr. Green died, Dr. Young continued as such Financial Agent of Vanderbilt University and continued prosecuting his campaign for funds among Methodists for this Methodist institution.

(*f*) In 1898 to 1901 the General Conference of the Methodist Episcopal Church, South, and the various Annual Conferences of that Church originated and carried out a plan for collecting subscriptions to the educational funds of the Church. This plan permitted donors to the fund to direct their gifts to whatsoever educational cause they desired. But in the absence of specific designation, Vanderbilt University was to receive twenty per cent of all sums raised. This twentieth century fund movement was purely a Methodist movement, and resulted in turning over to Vanderbilt University more than \$25,000.

(*g*) Mrs. Sarah Atkinson, of Memphis, a member of the Methodist Episcopal Church, South, bequeathed property to Vanderbilt University amounting to \$44,290.

(*h*) Mrs. Mary H. Furman, a member of McKendree Church,

Methodist Episcopal, South, of Nashville, Tennessee, bequeathed property to the university which amounted to about \$85,000, the sum being invested in Furman Hall, one of the handsomest buildings upon the university campus.

(i) Donation to library by Bishop Tigert's estate, \$5,000.

(j) By Mrs. E. W. Nicholson, \$15,000.

(k) Former students of the Biblical Department for special chair, \$20,000.

(l) In 1905, when the main building of the university was destroyed by fire, a movement was made, largely promoted by Methodists, to raise a fund to restore the building. A public meeting was held in the city of Nashville, at which a Methodist presided, and at which about \$30,000 was raised for the university. Some of this was given by persons not Methodists, but the most of it was by members of that Church.

(m) Many other liberal donations were made by Methodists, among them Col. and Mrs. E. W. Cole, over \$19,000; Samuel Cupples, over \$21,000; R. W. Millsaps, \$1,000; J. G. Carter Scholarship, \$1,500; W. F. Taylor Scholarship, \$1,000; Elliston Scholarship, \$4,740; Owen Medal Endowment, \$500; Dempsey Weaver Donation, \$6,350; Jacob Henry, \$5,000; R. T. Moore Annuity, \$1,500; W. D. Scott, \$10,250; Mrs. Sarah Seabury, \$1,337; Mrs. I. J. Edwards, \$555; Martha Boddie, \$2,500; W. M. Cartmell, \$11,018; and others.

(n) The General Conference of the Methodist Episcopal Church, South, in 1906 ordered a collection to be taken annually for the aid of Sunday schools and the advancement of Christian education, and provided that a certain portion of this collection be applied to the endowment of a Chair of Religious Pedagogy and Sunday Schools in the Vanderbilt University, same to be retained by the Treasurer of the General Sunday School Board until fifty thousand dollars are raised.

The collections upon this fund to October 25, 1910, amounted to seventeen thousand one hundred and forty-eight dollars and eighty-seven cents (\$17,148.87).

3. The patronage of the university from its opening has been very largely from the Methodist families throughout the Methodist Episcopal Church, South.

At nearly every session of the various original patronizing Conferences, and subsequently at the General Conferences, either

through direct reports of representatives of the university made to the Conference, or by reports of the Board of Education of such Conferences made to the Conference, attention was called to Vanderbilt University. It was approved by the Conferences and recommended to the patronage of its people. And in consequence of this, it has from the first been largely patronized by young men from Methodist families.

XXIV

(This section is omitted for reasons stated in the preface.)

IN CONSIDERATION OF THE PREMISES, complainant prays:

1. That the parties named in the caption of this bill as defendants be made such by the issuance and service of copy and process as to the resident defendants, and by publication as to the nonresident defendants, upon whom service of process is not had.

2. To the end that all defendants may be required to appear and answer this bill, but not on oath, answer on oath being expressly waived.

3. That it be adjudged and decreed that the Methodist Episcopal Church, South, by and through its General Conference, is entitled as a member of Vanderbilt University to select, nominate or confirm, either by itself or through its General Board of Education, members of the Board of Trust of said university; that it be adjudged and decreed that Vanderbilt University was established by the patronizing Conferences of the Methodist Episcopal Church, South, as alleged in the bill, and that it is being maintained and patronized by the Methodist Episcopal Church, South, and by the General Conference thereof, and that the General Conference as the representative governing body of the said Methodist Episcopal Church, South, has the power and authority and has exercised the option to elect and provide for the election of the members of the Board of Trust and to fill vacancies therein.

4. That the action of the General Conference of the Methodist Episcopal Church, South, at its meeting in Asheville, North

Carolina, in May, 1910, in electing relators Harris, Godbey, and Biggs as members of the Board of Trust to fill the vacancies then existing upon said Board, was a proper exercise of the power and authority of said General Conference as the governing body of the Methodist Episcopal Church, South, and also as the successor of the patronizing Conferences as the member of said corporation.

5. That by virtue of the action of the General Conference relators became members of said Board of Trust to fill the vacancies therein existing.

6. That the action of the Board of Trust of Vanderbilt University as taken on the 11th and 12th of June, 1910, as set out in the bill, in refusing to recognize the above-named relators as members of the Board of Trust, was illegal and contrary to the fundamental law of the corporation and *ultra vires* the authority of the Board of Trust.

7. That their action in attempting to elect members of the Board of Trust in the place of the above-named relators, and in rescinding the by-law requiring the members of the Board of Trust to be confirmed by the General Board of Education of the Methodist Episcopal Church, South, and in attempting to fill vacancies upon the Board, and to elect members of the Board without confirmation of the General Board of Education of the Methodist Episcopal Church, South, was illegal and an attempted usurpation of the rights of the said Board of Trust.

8. That the attempted election by said Board of Trust and its members at the said meeting above referred to was, for the reasons set forth in the bill, illegal and conferred no right or authority upon the persons so elected; and that they acquired, by virtue of said election, no right to act as said trustees.

9. That it be further adjudged and decreed that the parties named—to wit: Waller, Jackson, and Robins—be adjudged to have no right or title to said office, and judgment be entered excluding them from the same; and that the relators, Harris, Godbey, and Biggs, be adjudged to be entitled to exercise the office of members of the Board of Trust in the place of and to fill the vacancies caused by the death of Mr. Samuel J. Keith, Bishop Seth Ward, and Mr. John B. Ransom.

10. That a writ of injunction issue enjoining the defendant Board of Trust from holding or attempting to hold any special

or regular meeting of said Board without notice to the relators, Harris, Godbey, and Biggs, and without permitting the said relators to participate in said meetings; also

11. That an injunction issue enjoining defendants, Waller, Jackson, and Robins from meeting with said Board of Trust or exercising the duties and privileges as members thereof; also

12. That the defendant Board of Trust be enjoined from selling, transferring, or disposing of, or exchanging to George Peabody College for Teachers any part of the real property belonging to the defendant Vanderbilt University.

13. That such other further and general relief be granted as the facts of the case may demand and as to equity and good conscience belong.

This is the first application for issuance of writs of injunction and other extraordinary process.

(Signed)

FITZHUGH & BIGGS,
P. D. MADDIN,
HARRIS & HARRIS,
E. C. O'REAR,
Solicitors for Relators.

(Signed)

A. B. ANDERSON,
Attorney-General Tenth Judicial District of Tennessee.

STATE OF TENNESSEE, DAVIDSON COUNTY.

Before me, R. H. Maxson, a Notary Public in and for the above-named County and State, personally appeared Collins Denny and James H. McCoy, two of the relators in the above and foregoing bill, and who affirm that the facts stated in said bill made on knowledge are true, and those made upon information they verily believe to be true.

(Signed)

COLLINS DENNY,
JAMES H. MCCOY.

Subscribed and affirmed before me this 24th day of October, 1910.

R. H. MAXSON, *Notary Public.*

(Notarial Seal.)

I am security for the costs.

PERCY D. MADDIN,
ALBERT W. BIGGS.

APPENDIX.

DOCUMENT 1.

No. 7631.

EXHIBIT "A."

PETITION.

Filed April 23, 1873. (Enrolled in Book 3, page 469.)

THE CENTRAL UNIVERSITY OF THE METHODIST EPISCOPAL
CHURCH, SOUTH. EX PARTE.*To the Hon. W. F. Cooper, Chancellor, etc.*

The petition of the Central University of the M. E. Church, South, a corporation chartered heretofore by the Chancery Court at Nashville.

Petitioner would state to Your Honor that heretofore, by a decree of record in this Court, it was chartered as a university of learning, a certified copy of its charter is here filed, marked "Exhibit B," and made a part of this petition. Since it has obtained its charter its condition is so altered that it now desires to have an amendment to its said charter, which amendments are as follows:

It having been thought politic to limit the number of the Board of Trust to two from each coöperating Conference, the names of Jordan Stokes and Robert A. Young be dropped from the list. Some Conferences not having coöperated in the purposes of said institution, it is now desirable to omit from the list of trustees the names of the persons heretofore incorporated and who represented said Conferences, as follows—viz.: Christopher D. Oliver, William Dickson, of the North Alabama Conference; Edward Wadsworth and W. W. Byrd, of the Alabama Conference; W. L. C. Hunnicutt and Thomas Christian, of the Mississippi Conference; and James L. Borden and William H. Foster, of the Louisiana Conference.

A large donation having been made to petitioner by C. Vanderbilt, of New York, of not less than \$500,000, as set out in "Exhibit C," herewith filed and made a part of this petition, petitioner prays that its name and style be changed to that of "The Vanderbilt University," and that the terms and conditions of said gift be incorporated as a part of said charter.

Petitioner also prays that the words, "or the resolutions of the convention at Memphis set out herein, which resolutions are hereby adopted as a part of this charter," on page 12 of the printed charter here filed, be stricken out and omitted, and that said charter may be so altered and amended as to read as set out in "Exhibit D" here filed and made a part of this petition. Petitioner asks that this be done in order that the ends of its creation may be the more readily attained.

Petitioner prays general and full relief in the premises.

EDWARD H. EAST, *Solicitor*.

EXHIBIT "B."

AMENDED CHARTER.

Decree entered June 16, 1873. (Minute Book X, page 309.)

CENTRAL UNIVERSITY OF METHODIST EPISCOPAL CHURCH, SOUTH.
EX PARTE.

This matter came on this day to be heard before the Chancellor upon the petition heretofore filed, and publication of the matter thereof having heretofore been made according to the statutes in such cases made and provided, the Court is pleased to order and decree that the name and style of the Central University of the Methodist Episcopal Church, South, a corporation heretofore chartered under the constitution and laws of this State as a university of learning, and with all the powers, rights, and privileges of such corporations as are now given and conferred by the laws of the State of Tennessee, or may hereafter be given and conferred, be changed to the name and style of THE VANDERBILT UNIVERSITY, by which name it shall hereafter be known and sue and be sued, hold and receive property, confer degrees, and do any and all things which, by the present and future laws of Tennessee, it may be empowered to do.

It is further decreed that all the rights of property, powers to contract, privileges, immunities, and franchises which heretofore by law, under the decree of this Court, were conferred upon the said corporation under the name and style of the Central University of the Methodist Episcopal Church, South, and the property or rights thereof which have heretofore been secured to said corporation pass to THE VANDERBILT UNIVERSITY and its assigns and successors, forever, for the purposes of said corporation. And that it have the power to pass by-laws, resolutions, etc., not inconsistent with the laws of the land, and to increase and diminish the number of its trustees and change the name of its schools, and do and perform any and all acts allowable by law to corporations of learning. It is further decreed that the said VANDERBILT UNIVERSITY pay the cost of this proceeding, for which *fi. fa.* issue.

W F COOPER, *Chancellor.*

STATE OF TENNESSEE,

DAVIDSON COUNTY.

I, Park Marshall, Clerk and Master of the Chancery Court at Nashville, Tennessee, do hereby certify that the foregoing are full, true, and perfect copies of the Petition of A. L. P. Green *et al.*, filed June 29, 1872, enrolled in Book No. 2, page 48; Decree of August 6, 1872, entered in Minute Book W, page 267; the Petition of the Central University of the Methodist Episcopal Church, South, filed April 23, 1873, enrolled in Book 3, page 469; and Decree of June 16, 1873, entered in Minute Book X, page 309, now on file in my office.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the official seal of said Court at my office in the Courthouse at Nashville, Tennessee, this the 17th day of October, 1906, and in the 131st year of American independence.

PARK MARSHALL, *Clerk and Master;*
By J. R. WEST, *Deputy Clerk and Master.*

DOCUMENT 2.

COPY OF RESOLUTION PASSED BY THE GENERAL CONFERENCE OF
THE METHODIST EPISCOPAL CHURCH, SOUTH, HELD AT
LOUISVILLE IN 1874. MINUTES, PAGE 577.

The following resolution was then offered, read, and adopted
by a rising vote.

RESOLUTION ON THE VANDERBILT UNIVERSITY.

Whereas, We regard the establishment and endowment of institutions of learning under the control of the Church as of vital importance to the welfare of our people, and that these objects address themselves to our convictions and appeal to every principle of humanity and religion and call for the most liberal devising, and for the most generous and complete consecration; and whereas, the example of the wealthy in the bestowal of their means for the promotion of a liberal culture and for the support of educational institutions of a high grade is worthy of imitation and hearty commendation; and whereas, we have heard with pleasure of the munificent gift of Mr. Cornelius Vanderbilt, of New York, of over half a million of dollars to build and endow a university under the control of the M. E. Church, South; therefore, be it

Resolved, That we are thankful to God, from whom is every good gift and every perfect gift, for this instance of enlarged beneficence; that we tender to Mr. Cornelius Vanderbilt the expression of our appreciation of his noble generosity; and that we will ever pray that the richest blessings of heaven may rest upon him.

LINUS PARKER,
C. G. ANDREWS.

ANSWER OF DEFENDANTS.

STATE OF TENNESSEE, EX REL., ETC.

VS.

THE BOARD OF TRUST OF VANDERBILT UNIVERSITY,
ET ALS.

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE.
RULE No. 27,177.

The joint and separate answer of The Vanderbilt University, and of J. H. Kirkland, W R. Cole, G. M. Neely, G. B. Winton, C. W. Byrd, Nathaniel Baxter, Charles N. Burch, William Hughes, George W Martin, Allen R. Carter, W C. Ratcliffe, William L. Moose, Samuel Cupples, Elliott H. Jones, W T. Sanders, Robert F. Maddox, James C. McReynolds, Eugene J. Buffington, Horace H. White, Claude Waller, J. A. Robins and R. F. Jackson to the bill filed against them and others in the above entitled cause on the 25th day of October, 1910.

These respondents, for answer to so much and such parts of the bill as they are advised it is material for them to answer, answering say:

I.

It is true, as alleged in the bill, that respondent, The Vanderbilt University (hereinafter called the University), is a corporation organized and existing under the laws of Tennessee; and

It is also true that respondents, J. H. Kirkland, W R. Cole, G. M. Neely, and the other respondents, alleged in the bill to be members of the Board of Trust (hereinafter called the Board) of The Vanderbilt University, are members of the said Board; and

It is also true that respondents, Claude Waller, J. A. Robins, and R. F. Jackson claim to be members of the said Board; and respondents say that the said Waller, Robins, and Jackson are members thereof, and that they were duly and regularly elected by the other members of the said Board at a lawful meeting of the Board duly held on the 11th and 12th days of June, 1910, to fill vacancies therein, and that they accepted such election, and have since acted as members; and

It is also true, as respondents are informed and believe, that the General Conference of the Methodist Episcopal Church, South, did, as such Conference, and at a meeting thereof held in May, 1910, assume and pretend to elect relators V. A. Godbey, N. E. Harris, and Albert W. Biggs to be members of the Board of Trust of the said University to fill the vacancies therein, which, as hereinabove stated, respondents Waller, Robins, and Jackson were subsequently elected to fill; and

It is also true that relators Godbey and Harris presented themselves in person, and also the credentials of relator Biggs, at a meeting of the Board of Trust of the University held in June, 1910, and that they demanded the right, by virtue of such pretended election, to be seated and recognized as members of the Board, and that their demands were denied, and that by the votes of the members of the Board they were refused to be seated and recognized.

II.

Respondents admit that the relators in the bill named, and who are averred to be Bishops of the Methodist Episcopal Church, South (hereinafter called the Church), and to be members of the College of Bishops of said Church, are members thereof as alleged, but respondents deny that they, or any of them, are visitors of the University, or that they are a board of supervisors thereof, to whom is confided visitorial power. These averments are untrue; but

Respondents admit that the General Conference is the highest governmental agency of the Church, and that the Bishops are the chief executives of the Church, and that the annual conferences are subordinate representative bodies which govern in territories established by the General Conference, as stated in the bill; and

III.

Respondents deny that The Vanderbilt University is now, or ever was, endowed and maintained by the Methodist Episcopal Church, South. It is not and never was.

IV

THE MEMPHIS CONVENTION AND RESOLUTIONS.

In order to make plain these denials of the averments of the bill, and others which will follow, it is necessary for respondents to relate the facts with respect to the origin, creation, rights and powers of the University, and the powers of its Board of Trust under the laws of Tennessee. Many of these facts have been omitted in the bill, and wrong inferences and deductions have been drawn from the facts therein stated, as will more fully appear when all of the facts are shown.

In the years which followed the Civil War the people of Tennessee and of other Southern States realized keenly the necessity for an educational institution of a high order in their midst, and, by reason of their numbers and situation, the Southern Methodists felt such need as much as any other class. They appreciated the necessity of moving in the direction of the establishment of such an institution, both for the general education of the youth of the South, and for the special education of those who were to become ministers of the Church in the future.

It is true, as the bill avers, that one of the first steps towards bringing about the establishment of the institution now known as Vanderbilt University was a resolution of the Tennessee Conference of the Church—one of the annual conferences—adopted at Lebanon, Tennessee, in October, 1871, and which is as follows:

Resolved, That we request the presiding Bishop to appoint a committee of three to *confer* with the Memphis, North Alabama, North Mississippi, and any other conferences likely to coöperate with us in reference to the establishment and endowment of a Methodist university of high grade and large endowment.

This resolution was proposed by the Rev. D. C. Kelley, and was signed by him and the Rev. Wellborn Mooney, and was hastily adopted on the last day of the session.

In pursuance of the above resolution, and of other like resolutions adopted by other annual conferences, certain persons were appointed by said conferences to meet in a convention to consider the establishment of such a university as was suggested, but respondents deny that the intention or effect of such resolutions was to authorize such persons to incur any obligation that would be legally binding on said conferences, or to make said conferences members of any corporation that might be created, or to do anything else on behalf of the conferences than to *confer* about the matter.

It is true, and therefore respondents admit, that, as a result of this action, a Convention was held at Memphis, Tennessee, on the 24th day of January, 1872, and on subsequent days, at which the persons thus appointed, and representing seven annual conferences of the Church, were present. There were present men prominent in the Church, such as Bishop H. N. McTyeire and Bishop Robert Paine, and there were present also a number of laymen, including such eminent lawyers as Judge E. H. East, then Chancellor of Davidson County, Tennessee, Judge Robert J. Morgan, then Chancellor of Shelby County, Tennessee, Hon. Morgan Brown, and Hon. Jordan Stokes, and it was the consensus of opinion of the members of the Convention, after a thorough discussion of the subject, that the proposed institution should be of the highest order, and upon the surest basis for the education of the youth of the Church and country—the sons of Methodists and of other people—and that it should, therefore, be established *on broad and liberal educational lines*. They thereupon adopted the following resolutions, which respondents are informed and believe were prepared by Bishop McTyeire, namely:

Resolved by the Convention: 1. That measures be adopted looking to the establishment, as speedily as practicable, of an institution of learning of the highest order and upon the surest basis, where the youth of the church and country may prosecute theological, literary, scientific and professional studies to an extent as great, and in a manner as thorough, as their wants demand.

2. That this institution shall be called the Central University of the Methodist Episcopal Church, South.

3. That it shall consist, at present, of five schools or departments—viz.: a theological school, for the training of our young preachers, who, on application for admission, shall present a recommendation from a quarterly or annual conference, and shall have obtained a standard of education equal to that required for admission on trial into an annual conference; and instruction to them shall be free, both in the theological and the literary and scientific departments. Secondly, a literary and scientific school. Thirdly, a normal school. Fourthly, a law school. Fifthly, a medical school.

4. That the sum of one million dollars is necessary in order to realize fully the object desired, and not less than five hundred thousand dollars must be secured as a condition precedent to the opening of any department of the university.

5. That the location of the university shall be left to the decision of the College of Bishops of the Methodist Episcopal Church, South.

6. That the carrying out of this whole scheme is hereby committed to the following persons, viz.: William C. Johnson, Robert J. Morgan, Smith W. Moore, Milton Brown, Alexander L. P. Green, Jordan Stokes, David C. Kelley, Edward H. East, Robert A. Young, Landon C. Garland, Phillip Tuggle, John M. Steele, James H. McFerrin, Christopher D. Oliver, William Dickson, Edward Wadsworth, William Byrd, William L. C. Hunnicutt, Thomas Christian, James L. Borden, William H. Foster, Andrew Hunter, James L. DeYampert, and David T. Reynolds, who shall take immediate steps for securing a suitable charter of incorporation, and shall be a Board of Trust, with power to solicit and invest funds, appoint an agent or agents, and to do whatever else is necessary for the execution of this scheme.

7. That seven of the Board of Trustees, at any meeting regularly called, shall constitute a quorum.

8. That provision be made in the charter for giving a fair representation in the management of the university to any annual conference hereafter coöperating with us.

9. That the Bishops of the Methodist Episcopal Church, South, be, and are hereby, requested to act as a board of supervision of the university or any of its departments, and jointly with the Board of Trust to elect officers and professors, and prescribe the course of study and the plan of government.

Respondents say (and the resolutions show) that the plan suggested and adopted in the Memphis resolutions was broader

than that contemplated by the resolution of Messrs. Kelley and Mooney, adopted at Lebanon, in October, 1871, looking to the establishment of a Methodist university purely; for it contemplated an institution of the "highest order and upon the surest basis," for the thorough education of the youth of the Church and country, in law, medicine, science and literature, as well as in theology, and it provided that not a department of any kind should be opened until a fund of five hundred thousand dollars had first been secured. That the plan provided by the convention was of the breadth and character now averred by respondents is apparent from the public official statements of those selected to carry out the scheme, and particularly from an address issued by the Board on January 17, 1873, in which, among other things, it is said:

The plans outlined by that body [the Memphis Convention] were *larger in their scope* than any that had before been presented to Southern Methodism. As the public mind, in and out of the Church, became familiar with these plans, their largeness and liberality created favor rather than mistrust—as some had feared. Accepting what has been accomplished by others in denominational education with praise and gratitude, we also accept the prevalent conviction that, under the conditions reached, something broader and higher may be attempted. In this we believe we can count on the sympathy of all true friends of learning.

Although the members of the Memphis Convention, whose authority from the conferences was limited to the purpose of conferring together, thus took on themselves the responsibility of launching the project, and of broadening its scope, and that, without even referring the plan to the conferences for consideration, they nevertheless did not assume, in the resolutions adopted by them, to pledge the means of the Church or the conferences to the carrying out of the enterprise, or to impose on them any legal responsibility for its establishment, government or maintenance. While it was doubtless intended and expected that the conferences represented in the Memphis Convention, and other conferences, would take an interest in, and give substantial aid to, the University thus projected, it was nevertheless true, and was recognized to be true, that the several conferences were

entirely free to exercise their volition in the matter. And in fact, as will presently be seen, some of the conferences represented in the Memphis Convention declined to go forward with the enterprise, and none of them, as a conference, gave to it any financial aid.

The intelligent body of men, cleric and lay, that composed the Memphis Convention were entirely aware of their limited authority to commit the Church and its agencies in the matter with which they were dealing, and accordingly, in their reference to the Bishops, they went no further than to *request* them to act as a board of "supervision," and jointly with the Board of Trust to (a) elect officers, (b) elect professors or teachers, and (c) prescribe the course of study and plan of government; and they did *not* include in this request that the Bishops should act jointly with the Board, or should act at all, in the matter of filling vacancies in the Board of Trust.

Likewise, while the resolutions contemplated that provision should be made in the charter for giving a fair representation in the management of the University to any annual conference thereafter coöperating, the members of the Convention did not undertake to define, even for their own conferences, the terms of the relation that should exist between the University and the conferences, and this for the evident reason that, even if they could have regulated this matter for the corporation that they were proposing to create, they could not know to what extent, if at all, the conferences would be willing to engage in the enterprise.

Accordingly, the resolutions commit to the twenty-four individuals named, *as individuals and not in a representative capacity*, "the carrying out of the whole scheme," with authority to secure a suitable charter, solicit and invest funds, appoint agents, and "do whatever else is necessary for the execution of the scheme," and they do not restrict, or even assume to restrict, or in any way to qualify or limit, the rights and powers of the incorporators, or of the Board of Trust, under the charter directed to be obtained.

V

1872. THE BISHOPS' REFUSAL TO CO-OPERATE WITH THE BOARD OF TRUST.

Respondents aver that it was the evident intention of the Memphis resolutions that this proposed university should be accepted by the Church to fill the wide field for which it was designed, and should enjoy the special care and favor of the Bishops of the Church; but respondents say that this intention was not realized.

Immediately after the conclusion of the Memphis Convention a quorum of the Board of Trust designated by that Convention met and organized, and appointed a committee to prepare and procure a charter, and to draft a code of by-laws, and thereupon adjourned to meet in Nashville on May 8, 1872, at which time the College of Bishops would be assembled in that city; and

At this adjourned meeting the Board formally advised the College of Bishops then in session of the action of the Memphis Convention, and of the terms of the Memphis resolutions, and requested them to accept of the official relations therein sought to be established, but on the next day, viz.: May 9, 1872, the Bishops *declined* to accept of these relations by the adoption of the following resolutions, namely:

(1) That the College of Bishops accede to the request made by the Board of Curators of the contemplated University to locate the institution whenever the sum of \$500,000 shall be pledged for the enterprise.

(2) That by this act we are not to be understood as implying that the said institution is to be considered connectional, to the damage of existing colleges and universities. We can take no official relation to the Central University that will discriminate between it and any and every other institution of the Church. Nevertheless, we feel free to give our decided approval to the combination of the several annual conferences represented in the Convention in Memphis, or so many of them as may agree together, acting through their representative bodies, in getting up an institution of the highest grade.

(3) That, as the question of theological schools is in controversy among our people, we propose no action that may be construed into an expression of our collective

opinion on the subject; but it is made a condition of the first resolution that the theological department, to be comprised with the literary and professional departments of the proposed Central University, be such as is consistent with the action of the General Conference held in Memphis, 1870, in the words following:

“Resolved, That we endorse the action of the last General Conference in reference to biblical chairs in connection with our existing colleges as the best available means for training young preachers.”

The College of Bishops replied, not only that they could take “no official relation to the Central University that will discriminate between it and any and every other institution of the Church,” but said further that, in “acceding” to the request that they locate the University, they did so on the condition that the theological department of the University should be such as was consistent with certain views theretofore expressed by the General Conference. The Bishops were doubtless influenced by the fact that there was at the time a profound and sincere difference of opinion prevailing in the Church, and even among the Bishops, as to the wisdom and propriety of establishing a school for the special training of preachers.

In the action thus taken by them the College of Bishops treated the fifth of the Memphis resolutions, viz.: “that the location of the University shall be left to the decision of the College of Bishops of the Methodist Episcopal Church, South,” as having been intended merely as a *request*; and they clearly declined to act as a board of supervision; and at the same time they indicated that the theological department was the feature in which they, as a College of Bishops, were principally interested; and

A request of the Board of Trust at the time that the Bishops attend the meeting of the Board was *ignored*, so that in this, the most critical period in the history of the University, the Bishops declined coöperation, and withheld their aid and counsel.

Respondents further aver and say that the College of Bishops never, by any official action, accepted of the proposed relation, or changed the attitude assumed by them toward the University in and by their said resolution of May 9, 1872; and respondents

say that the College of Bishops had the right to choose whether or not they would consent to occupy the relation proposed by the Board, and that their refusal of the Board's request constituted *an election* that was binding and conclusive on the Bishops, so that neither the Bishops nor the General Conference has since had the power to revive and establish this proposed relation, except with the consent and concurrence of the Board of Trust.

Respondents further aver and say that, if the ninth of the Memphis resolutions was and is validly a part of the charter of the University, and if it is mandatory, nevertheless, since the Bishops are an unincorporated body, and since there is no such person known to the law as Bishop of the Methodist Episcopal Church, South, the effect of this resolution would be, at most, to confer the powers therein described on the individuals who were Bishops at that time, and that such powers would not descend to and vest in their successors in office.

VI.

NATURE OF THE CORPORATION LAWS THEN IN FORCE IN TENNESSEE.

Under the corporation laws in force in Tennessee in 1871 to 1874 a charter could be obtained only upon petition to, and by decree of, the Chancery Court; and could only be granted to natural persons; and could only contain such powers and privileges as were authorized by general statutes of the State for charters of that kind and character.

It is true that certain classes of corporations, among which were universities and institutions of learning, were allowed to possess and enjoy the powers enumerated in Sections 1470 to 1473 of the Code of Tennessee of 1858, which sections define the powers of certain corporations authorized under the Code, and the rights and powers of the members of such corporations after they have become members; but

Respondents aver and say that these Sections 1470 to 1473 do not, and do not purport to, fix or determine how membership in such corporations shall arise, and do not pretend to confer rights of membership on any who would not otherwise be entitled to such rights.

VII.

1872. THE PETITION AND DECREE OF INCORPORATION.

On June 29th, 1872, the twenty-four persons named in the Memphis resolutions (and who are hereinafter called the petitioners), *as individuals*, and not as representatives of conferences or other bodies or societies, filed their petition in the Chancery Court of Davidson County, Tennessee, praying to be incorporated as "The Central University of the Methodist Episcopal Church, South." Their petition was in these words:

No. 7214.

IN CHANCERY AT NASHVILLE, TENNESSEE.

Filed June 29, 1872.

(Enrolled in Book 2, Page 48.)

IN THE MATTER OF THE CENTRAL UNIVERSITY OF THE
METHODIST EPISCOPAL CHURCH, SOUTH.

To the Chancellor, Presiding at Nashville, State of Tennessee;

The undersigned petitioners, citizens of Davidson County, Tennessee, to wit: A. L. P. Green, David C. Kelley, Robert A. Young and Edward H. East; also Jordan Stokes, of Wilson County, Tennessee; David T. Reynolds, a citizen of Giles County, Tennessee; William C. Johnson, Robert J. Morgan, citizens of Shelby County, Tennessee; Smith W. Moore and Milton Brown, of Madison County, Tennessee; Landon C. Garland and Phillip Tuggle, citizens of the State of Mississippi; John M. Steele and James H. McFerrin, citizens of the State of Arkansas; Christian D. Oliver, William Dickson, Edward Wadsworth and James L. DeYampert, citizens of the State of Alabama; W. M. Byrd, William L. C. Hunnicutt and Thomas Christian, citizens of the State of Mississippi; William H. Foster, James L. Borden and Andrew Hunter, citizens of the State of Louisiana, would respectfully petition the Court to incorporate them under the name and style of THE CENTRAL UNIVERSITY OF THE METHODIST EPISCOPAL CHURCH, SOUTH, for the purpose of soliciting subscriptions, donations, and for the erection and maintenance of an institution of learning of the highest order, containing all the schools belonging to a university of that character, together with the rights, powers, and privileges which by law may

belong to literary institutions chartered by the laws of the State. They pray to this end that the required publication may be made and all other necessary and proper steps be taken. And will ever pray.

THOMAS H. MALONE.

This petition was prepared by Judge Edward H. East, and is in his handwriting, as is also the name of Thomas H. Malone, signed thereto. Both were eminent lawyers and are now dead, and it is quite evident that Judge East, who was prominent in the Methodist Church, and who was greatly interested in the establishment of the University, had undertaken to prepare the necessary papers, but, because he was Chancellor of the Court, had gotten Mr. Malone's assent to use his name in this way.

The statement in the bill that the petition "recited the Memphis Convention and the resolutions adopted there" is untrue, for the petition contained no reference to the Memphis Convention or resolutions, or to the Church or to the Bishops; but, on the contrary, it presented the petitioners simply *as individuals* praying that *they* be incorporated to establish and maintain "an institution of learning of the highest order, containing [not merely five, as provided in the Memphis resolutions, but] *all* the schools belonging to a university of that character."

Publication was thereupon made, as by law prescribed, which publication stated the names of the petitioners, and that they, in and by their petition filed, were seeking to be incorporated

for the purpose of soliciting subscriptions, donations, etc., for the erection and maintenance of an institution of learning of the highest order, containing all the schools belonging to a university of that character, together with all the rights, powers and privileges which by law may belong to literary institutions chartered by the laws of this State.

In due course of procedure, and on August 6, 1872, the Court acted upon the said petition, and entered on its minutes the following decree:

THE CENTRAL UNIVERSITY OF THE METHODIST EPISCOPAL CHURCH, SOUTH. *Ex parte.*

This matter came on this day to be heard before the Hon. Nathaniel Baxter, Judge etc. of the Circuit Court of

Davidson County, sitting by interchange with the Honorable Edward H. East, the Chancellor presiding, but who was incompetent to preside and hear this cause, for the reason that he was interested herein; and the same was heard upon the petition of W. C. Johnson, Robert J. Morgan, Smith W. Moore and Milton Brown, citizens and residents of the State of Tennessee and representatives of the Memphis Conference of the Methodist Episcopal Church, South; and Alexander L. P. Green, Jordan Stokes, David C. Kelley, Edward H. East, David T. Reynolds and Robert A. Young, citizens and residents of Tennessee and representatives of the Tennessee Conference; and Landon C. Garland, a citizen and resident of Mississippi, and Phillip Tuggle, a citizen and resident of Tennessee, the two latter representing the North Mississippi Conference; and James H. McFerrin and John M. Steele, citizens of the State of Arkansas and representatives of the White River Conference; and Christopher D. Oliver and William Dickson, citizens of the State of Alabama and representatives of the North Alabama Conference; and Edward Wadsworth and W. M. Byrd, citizens of the State of Alabama and representatives of the Alabama Conference; and W. L. C. Hunnicutt and Thomas Christian, citizens of the State of Mississippi and representatives of the Mississippi Conference; and James L. Borden and William H. Foster, citizens of the State of Louisiana and representatives of the Louisiana Conference; and Andrew Hunter and J. L. DeYampert, citizens of the State of Arkansas and representatives of the Little Rock Conference; and it appearing to the Court that said persons in their said petition, prayed to be incorporated under the name and style of THE CENTRAL UNIVERSITY OF THE METHODIST EPISCOPAL CHURCH, SOUTH, the object and plan of said University having been fully set forth in resolutions passed by the delegates of said conferences, at a convention of the same, held in the city of Memphis on the 24th, 25th, 26th and 27th of January, 1872, and which resolutions are in words and figures as follows:

“Resolved by the Convention: 1. That measures be adopted looking to the establishment, as speedily as practicable, of an institution of learning of the highest order, and upon the surest basis, where the youth of the church and country may prosecute theological, literary, scientific, and professional studies to an extent as great, and in a manner as thorough, as their wants demand.

“2. That the institution shall be called The Central University of the Methodist Episcopal Church, South.

"3. That it shall consist, at present, of five schools, or departments, viz., a theological school, for the training of our young preachers, who, on application for admission, shall present a recommendation from a quarterly or annual conference and shall have obtained a standard of education equal to that required for admission on trial into an annual conference; and instruction to them shall be free, both in the theological and the literary and scientific departments. Secondly, a literary and scientific school. Thirdly, a normal school. Fourthly, a law school. Fifthly, a medical school.

"4. That the sum of one million dollars is necessary in order to realize fully the object desired, and not less than five hundred thousand dollars must be secured as a condition precedent to the opening of any department of the university.

"5. That the location of the university shall be left to the decision of the College of Bishops of the Methodist Episcopal Church, South.

"6. That the carrying out of this whole scheme is hereby committed to the persons (herein named before as petitioners), who shall take immediate steps for securing a suitable charter of incorporation, and shall be a Board of Trust, with power to solicit and invest funds, appoint an agent or agents, and to do whatever else is necessary for the execution of this scheme.

"7. That seven of the Board of Trustees, at any meeting regularly called, shall constitute a quorum.

"8. That provision be made in the charter for giving a fair representation in the management of the university to any annual conference hereafter co-operating with us.

"That the Bishops of the Methodist Episcopal Church, South, be, and are hereby, requested to act as a board of supervision of the university or any of its departments, and jointly with the Board of Trust to elect officers and professors, and prescribe the course of study and the plan of government."

And it appearing to the Court that, upon the filing of said petition, the Clerk and Master of this Court caused, by an order at rules, the same to be advertised, in pursuance of the statutes in such cases made and prescribed; and it further appearing to the Court that no one has appeared and made known any objection to the granting of the prayer of the petition; and the Court, upon inspection of the designs and objects of said corporation, finds nothing therein contained to be against public policy or good morals, or in conflict with the Constitution and laws of the State or of the United States, is pleased to grant the prayer

of the same, and doth hereby order and adjudge and decree that the petitioners be declared a body politic and corporate under the name and style of THE CENTRAL UNIVERSITY OF THE METHODIST EPISCOPAL CHURCH, SOUTH, and in that name may sue and be sued, plead and be impleaded, in the Courts of this State or of the other States of the Union, or of the United States of America; may have a common seal, which may be altered at pleasure; shall have perpetual succession; may solicit and receive subscriptions, donations, legacies and devises; may hold real estate and personal property in such amounts as the business of the corporation requires, and may receive the same by contract, gift, will or devise, and shall hold the same for the purpose of said incorporation, with all the lawful conditions imposed by the donor; may appoint such subordinate officers and agents as the business of the corporation requires, prescribe their duties, and fix their compensation; to make by-laws not inconsistent with the laws of the land or this charter, or the resolutions of the convention at Memphis, as set out hereinbefore, which resolutions are hereby adopted as a part of this charter, but shall make all by-laws necessary and proper to carry out the object of said resolutions, as well as for the management of its property and the regulation of its affairs, and may also have power to pass all by-laws necessary to the use of the powers herein given, or which by law may hereafter be conferred; and all said powers, rights and privileges, together with such others as are not herein specially given and referred to, are hereby conferred upon said corporation in as full, complete and ample manner as by the laws of the State the same can or might be; and said corporation shall have the power to confer all the degrees of merit and honor usually conferred by universities. It is further decreed that petitioners pay the costs of this proceeding, and that the Clerk and Master issue to them a certified copy of this decree.

In this decree, and notwithstanding the entire lack of any warrant therefor in the petition and notice of publication, the petitioners are referred to as "representatives" of the several conferences, and it is recited that the Memphis resolutions "are hereby adopted as a part of this charter." As will presently be shown, this reference and recital were as much without the authority of the law as they were outside the scope of the pleadings.

VIII.

1872. THE BOARD'S FIRST ACT TO DECLARE THEIR RIGHT TO PERPETUATE THEMSELVES.

The petitioners met and accepted the charter on the 22nd day of August, 1872, and elected a president and other officers, and effected a permanent organization of themselves as the Board of Trust, and did this without consulting with or deferring to the conferences; and, at this organization meeting, they, the incorporators and Board of Trust, adopted the following resolution, namely:

Since the charter leaves the perpetuity of the Board in its own power, we request the several annual conferences co-operating to nominate at least four representatives from each. So soon as this shall be done, the present Board will reorganize in such manner as to secure the election of Trustees so nominated, and that thereafter, when vacancies shall occur, they shall be filled by nominations by the several annual conferences and confirmed by the Board—it being understood that the Board will not be enlarged beyond the first number, except so far as shall be necessary to give four members to each one of the conferences co-operating.

The Board of Trust thereupon prepared and issued an address to the Bishops and members of the Church, signed by D. C. Kelley as secretary of the Board, which, after setting out the communications between the Board and the Bishops, proceeded: "And now, having brought the subject before you in a tangible and practical shape, we beg to add that as a Board we have adopted the following resolution"—quoting thereupon *the foregoing resolution* of August, 1872.

In pursuance of this invitation of the Board of Trust, in which the Board asserted their inherent right to perpetuate themselves, five of the annual conferences expressed approval of the action of the Board, and accepted toward the new institution a relationship of friendly co-operation. The terms of such acceptances indicated clearly that *no legal relationship* was thereby created, and therefore the conferences spoke of themselves, and were spoken of, as "co-operating or patronizing

conferences." By their action in reference to the foregoing resolution of the Board the conferences *approved and accepted* the declaration of the Board that "the charter leaves the perpetuity of the Board in its own power."

The Board of Trust again met on the 16th day of January, 1873, and elected certain persons who had been nominated by some of the conferences in compliance with the request expressed in the resolution; and, without consulting any conference, they exercised the right and power to declare vacant the seats of those who had previously acted as members from the North Alabama, Alabama, Mississippi and Louisiana Conferences, for the reason, as stated, that these conferences had "failed to act in favor of Central University;" and

The Board also at the same time adopted the following by-law, known as by-law No. VII:

Each coöperating conference, being entitled to four members or representatives in the Board of Trust, should any vacancy or vacancies occur, the Board shall fill the same, upon the nomination of the conference to be represented.

The bill makes no mention of the fact hereinabove stated, that, on the very day in August, 1872, that the corporation began the exercise of its functions—and more than thirty-eight years before this suit was begun—its Board of Trust formally enacted, and thereupon issued to the Bishops and to the members of the Church, the declaration that "the charter leaves the perpetuity of the Board in its own power."

IX.

THE UNIVERSITY WITHOUT MEANS AT THE TIME OF MR. VANDERBILT'S GIFT.

Efforts were made to raise the necessary funds for the University, but they *failed*. Agents were appointed by the Board for this purpose, and these agents rendered their reports and were discharged in January, 1874, many months after Mr. Vanderbilt had endowed the University, as hereinafter shown. A full statement of what was accomplished by these agents is hereinafter set out in Section XXX of this answer.

X.

1873. MR. VANDERBILT'S FIRST GIFT. — ITS CAUSES AND MOTIVES.

In March, 1873, Cornelius Vanderbilt, of New York, gave \$500,000 to the University, and this was *the first gift* to it of either property or funds. His offer was made in the following words:

To Bishop H. N. McTycire, of Nashville:

I make the following offer, through you, *to the corporation* known as The Central University of the Methodist Episcopal Church, South:

First—I authorize you to procure suitable grounds, not less than from twenty to fifty acres, properly located for the erection of the following work:

Second—To erect thereon suitable buildings for the uses of the University

Third—You to procure plans and specifications for such buildings and submit them to me, and, when approved, the money for the foregoing objects to be furnished by me as it is needed.

Fourth—The sum included in the foregoing items, together with the "Endowment Fund" and the "Library Fund," shall not be less in the aggregate, than FIVE HUNDRED THOUSAND (\$500,000) DOLLARS, and these last two funds shall be furnished to the corporation as soon as the buildings for the University are completed and ready for use.

The foregoing being subject to the following conditions:

First—That you accept the presidency of the Board of Trust, receiving therefor a salary of three thousand (\$3,000) dollars per annum and the use of dwelling house, free of rent, on or near the University grounds.

Second—Upon your death or resignation the Board of Trust shall elect a president.

Third—To check hasty and injudicious appropriations or measures, the president shall have authority, whenever he objects to any act of the Board, to signify his objections in writing within ten days after its enactment, and no such act to be valid unless, upon reconsideration, it be passed by a three-fourths vote of the Board.

Fourth—The amount set apart by me as an endowment fund shall be forever inviolable, and shall be kept safely in-

vested, and the interest or revenue only used in carrying on the University. The form of investment which I prefer, and in which I reserve the privilege to give the money to said fund, is in seven per cent first mortgage bonds of the New York Central & Hudson River Railroad Company, to be registered in the name of the corporation, and to be transferable only upon a special vote of the Board of Trust.

Fifth—The University is to be located in or near Nashville, Tenn.

Respectfully submitted,

C. VANDERBILT.

It is not true, as alleged in the bill, that this gift was made in response to an appeal of the Board of Trust, presented to Mr. Vanderbilt through Bishop McTyeire. In his address at the University on Founder's Day (May 27th), 1876, Dr. Landon C. Garland, the first Chancellor of the University, said:

Agents were appointed who entered diligently and faithfully upon the work; but the results showed that the object *could not be accomplished*. The enterprise met the approbation of the public, but the people were too poor to sustain it.

This was the condition of things in February, 1873, at which time Bishop McTyeire spent, by invitation, a few weeks with the family of Mr. Vanderbilt in New York. Mr. Vanderbilt and the Bishop had married cousins, in the city of Mobile, who were very intimate with each other in their girlhood, and thus was brought about an intimate relation between these two gentlemen. The Bishop had from the first deeply interested himself in the founding of the proposed institution; but this visit had no reference thereto. *He never did at any time solicit aid from Mr. Vanderbilt.*

And in the preface to the first pamphlet issued by the University, giving an account of the inaugural proceedings, written, as respondents aver and believe, by Bishop McTyeire himself, this statement is made:

Such, however, was the exhausted condition of the South and so slow its recuperation under the disorganized state of its labor, trade and government, that the first efforts to raise funds showed *the impossibility of the enterprise*. The yearning desire of our people seemed destined to disappointment for this and following generations, and the well-laid scheme was already, in the judgment of some

of its warmest friends, *a failure*. At this crisis Mr. Vanderbilt came to their help. In his sympathy for a people struggling to revive their fortunes, and to secure for their posterity the highest blessing of Christian civilization, he stepped forward, and *by his princely gift gave form and substance to the plan*.

And Mr. Vanderbilt himself gave this interpretation of the motives actuating him, for on the 29th or 30th of July, 1872, he stated:

I fitted out a vessel during the war to help suppress the rebellion and bring your people back into the Union, and I feel it my duty now to do something for the South, especially as I have married one of Mobile's noblest daughters.

I wish the University to be conducted with the best talent *on non-denominational lines*. I believe the education of the youth of the South on these lines will do much to harmonize the former strained relations.

I put Bishop McTyeire at the head of the Trust on a fixed salary for life, *not because he was a Methodist*, but a man of talent and of fine executive ability, and because his wife and mine were cousins.

President McTyeire, in a paper written by him just before leaving for Europe, and entitled "Last words before leaving, June 28, 1881," said: "My wife was a silent but golden link in the chain of providence that led to Vanderbilt University."

At the opening exercises of the University on October 4, 1875, which were largely attended by the public, the Rev. Charles F. Deems, pastor of the Church of which Mr. Vanderbilt was an attendant (and not a Methodist Church), was present as the accredited representative of Mr. Vanderbilt, and delivered a public address, in the course of which, turning to the Honorable James D. Porter, then Governor of Tennessee, who was presiding on that occasion, he said:

He did me the honor to request me to bring to Your Excellency his respectful salutations, and to assure you that good and sufficient reasons exist for his absence, which is due to no lack of interest in this great Commonwealth of Tennessee, nor in this good city of Nashville, nor in this young University, for which he has done what he has done, trusting that it will promote the general interests of learning, and of this whole nation, *without regard to sect or section*.

Nor did the Board of Trust refer the matter of Mr. Vanderbilt's gift to any conference, or to the College of Bishops, but, as the sole and duly authorized representatives of the University, they, on the 26th day of March, 1873, adopted the following resolutions:

1. *Resolved*, That we accept with profound gratitude this donation, with all the terms and conditions specified in said proposition.

2. *Resolved*, That, as an expression of our appreciation of this liberality, we instruct the committee hereinafter mentioned to ask the Honorable Chancery Court to change the name and style of our corporation from "The Central University of the Methodist Episcopal Church, South," to "Vanderbilt University," and that the institution *thus endowed and chartered* shall be from henceforth known and called by this name.

3. *Resolved*, That the Hon. M. Brown, the Hon. E. H. East, and the Rev. D. C. Kelley, D.D., be, and they are hereby, authorized and requested to obtain, at the earliest practicable day, such modifications of our charter as will enable this Board to conform its future operations to the conditions aforesaid.

4. *Resolved*, That the secretary is requested to convey to Mr. C. Vanderbilt the sincere thanks of this Board, with a copy of these resolutions.

These resolutions were forwarded to Mr. Vanderbilt by Dr. D. C. Kelley, the secretary of the Board, and on the 31st day of March, 1873, Mr. Vanderbilt replied as follows:

NEW YORK, March 31, 1873.

D. C. Kelley, Esq., Secretary:

MY DEAR SIR: Your favor of the twenty-seventh instant, inclosing a resolution of The Central University of the Methodist Episcopal Church, South, passed the twenty-sixth inst., is received and is very satisfactory.

Very respectfully yours,

C. VANDERBILT.

The character of the service thus rendered by Cornelius Vanderbilt has been fittingly recognized, for, throughout the history of the University, its publications have uniformly said that it owed its *foundation* to his generosity, and his birthday has been celebrated as *Founder's Day*.

XI.

1873. THE AMENDED CHARTER.

Thereafter, on April 23, 1873, the Board of Trust, through Judge E. H. East as their counsel, presented a petition to the Chancery Court of Davidson County, praying that the charter of the University be amended, the petition being as follows:

No. 7631.

Filed April 23, 1873.

(Enrolled in Book 3, Page 469.)

THE CENTRAL UNIVERSITY OF THE METHODIST EPISCOPAL CHURCH, SOUTH. *Ex parte.*

To the Hon. W. F. Cooper, Chancellor, etc.:

The petition of The Central University of the Methodist Episcopal Church, South, a corporation chartered heretofore by the Chancery Court at Nashville.

Petitioner would state to Your Honor that heretofore, by a decree of record in this Court, it was chartered as a university of learning—a certified copy of its charter is here filed marked “Exhibit B,” and made a part of this petition. Since it has obtained its charter, its condition is so altered that it now desires to have an amendment to its said charter, which amendments are as follows:

It having been thought politic to limit the number of the Board of Trust to two from each co-operating conference, the names of Jordan Stokes and Robert A. Young be dropped from the list. Some conferences not having co-operated in the purposes of said institution, it is now desirable to omit from the list of Trustees the names of the persons heretofore incorporated, and who represented said conferences, as follows, viz.: Christopher D. Oliver and William Dickson, of the North Alabama Conference; Edward Wadsworth and W. W. Byrd, of the Alabama Conference; W. L. C. Hunnicutt and Thomas Christian, of the Mississippi Conference; and James L. Borden and William H. Foster, of the Louisiana Conference.

A large donation having been made to petitioner by C. Vanderbilt, of New York, of not less than \$500,000, as set out in “Exhibit C,” herewith filed and made a part of this petition, petitioner prays that its name and style be changed to that of “THE VANDERBILT UNIVERSITY,” and that the terms and conditions of said gift be incorporated as a part of said charter.

Petitioner also prays that the words, "or the resolutions of the convention at Memphis set out herein, which resolutions are hereby adopted as a part of this charter," on page 12 of the printed charter here filed, *be stricken out and omitted*, and that said charter may be so altered and amended as to read as set out in "Exhibit D" here filed and made a part of this petition. Petitioner asks that this be done, in order that the ends of its creation may be the more readily attained.

Petitioner prays general and full relief in the premises.

EDWARD H. EAST, *Solicitor*.

This petition states that, since the charter was obtained, the condition of the University has become so altered that it desires to amend its charter. It prays (1) that the names of certain trustees be omitted; (2) that the name of the University be changed to "The Vanderbilt University;" (3) that the terms and conditions of Mr. Vanderbilt's gift be incorporated as a part of the charter; and (4) that the words in the charter making the Memphis resolutions a part of the charter be stricken out; and it prays that these things be done "in order that the ends of its creation may be the more readily attained."

Judge William F. Cooper was then the Chancellor, and, after proper publication had been made stating the purposes of the amendment, he, on the 16th day of June, 1873, rendered the following decree amending the charter of the University:

IN THE MATTER OF THE CENTRAL UNIVERSITY OF THE
METHODIST EPISCOPAL CHURCH, SOUTH.

This matter came on this day to be heard before the Chancellor upon the petition heretofore filed, and publication of the matter thereof having heretofore been made according to the statutes in such cases made and provided, the Court is pleased to order and decree that the name and style of The Central University of the Methodist Episcopal Church, South, a corporation heretofore chartered under the Constitution and laws of this State as a university of learning, and with all the powers, rights and privileges of such corporations as are now given and conferred by the laws of the State of Tennessee, or may hereafter be given or conferred, be changed to the name and style of THE VANDERBILT UNIVERSITY, by which name it shall hereafter be known, and sue and be sued, hold and receive property, confer degrees, and do any and all things which, by the present and future laws of Tennessee, it may be empowered to do.

It is further decreed that all the rights of property, powers to contract, privileges, immunities and franchises, which heretofore by law, under the decree of this Court, were conferred upon the said corporation under the name and style of The Central University of the Methodist Episcopal Church, South, and the property or rights thereof which have heretofore been secured to said corporation, pass to THE VANDERBILT UNIVERSITY, and its assigns and successors, forever, for the purposes of said corporation. And that it have the power to pass by-laws, resolutions, etc., not inconsistent with the laws of the land, and to increase and diminish the number of its Trustees and Directors, and do and perform any and all acts allowable by law to corporations of learning. It is further decreed that the said VANDERBILT UNIVERSITY pay the cost of this proceeding, for which *fi. fa.* issue.

The foregoing decree or charter was not limited to a mere recital of the amendment, but was a re-declaration of the rights and powers of the corporation; and, whereas the original charter had prescribed that the by-laws must be consistent with the laws of the land *and* the Memphis resolutions, the amended charter, in response to the prayer of the petition that all reference to the Memphis resolutions be eliminated, gave the Board anew the power to enact by-laws, with the single restriction, common to all charters, that such by-laws must be consistent with the laws of the land.

XII.

1874. THE GARLAND RESOLUTION DECLARING THE BOARD'S EXCLUSIVE RIGHT TO FILL VACANCIES.

The University was now embarked on its career, with means to assure its reasonable success. Bishop McTyeire was elected president of the Board of Trust. The Board was first called upon after his election to the presidency to fill a vacancy in its membership at its meeting held on September 30, 1874. In his annual report *President McTyeire* recommended that the by-laws be amended so that the Board itself should take the initiative in filling vacancies, in the following words:

For obvious reasons, while as yet the patronizing conferences were to be determined by their own action, it was

left with them, as they concurred in the plan outlined by the convention at Memphis, to name persons to represent them in organizing. But, since *the charter leaves the perpetuity of the Board in its own power*, we should keep up the conference representation on the principle here suggested. The constituency, the fitness and the safety of the Board having this vast and growing interest in trust will be very uncertain if by popular election, on hasty and perhaps ill-considered grounds of choice, its future members are to be supplied. Whereas, the Board knows its own wants; is familiar with the nature of the work to be done; has the University and its interests in mind and on heart; and is ever watchful of its welfare, and on the lookout for suitable instruments and agents to promote it. *As the whole matter is covered by a resolution of your body, it may be adjusted readily*, and a precedent should now be set in filling the first vacancies. If possible, this Board should send up its nominations to the ensuing conferences. This course is not only demanded by provident wisdom, but it is in analogy with other and the oldest institutions of learning under the care of the Church. The Board elects or nominates, and the annual conference confirms.

The result of this recommendation was the adoption by the Board of the following resolution offered by *Chancellor Garland*:

Forasmuch as the charter of Vanderbilt University *confers upon the Board of Trust the exclusive right and power to fill vacancies* that may occur in its own body, and *as this power cannot be delegated to any other body* of persons whatsoever; therefore be it

Resolved, That this Board will proceed to fill the vacancies which have been created by the death of the late Dr. Green, and by the transfer of the Rev. W. C. Hearn to the Denver Conference. But, in order to maintain the closest connection with the patronizing conferences, the Board submits these and every other election to fill vacancies in its own body to the confirmation of the annual conferences from which the election is made.

XIII.

THE MEANING AND CORPORATE QUALITY OF THE MEMPHIS RESOLUTIONS.

Respondents aver and say that the Memphis resolutions, *if they ever were or could be*, and have remained, a part of the charter of the University—which these respondents deny—nevertheless contained *no provision that the conferences should elect the Trustees*, but left this matter to be regulated by the laws of the State; and that the provision for giving to the conferences “a fair representation in the management of the University” was one which, under the law, it rested with the Board alone to give effect to, and in the manner and to the extent that the interest shown by the conferences in the University, and the aid rendered by them to it, might seem to the Board to warrant and justify; and that, therefore, suit will not lie on the ground that the Board ought to have exercised its discretion in a different mode; and

Respondents say that, nevertheless, a relationship between the Church and the University has always been maintained by the Board of Trust, and that this has been done, as has been and will be shown, through the enactment by the Board of *by-laws* giving to the annual conferences, and later to the General Conference, the right to confirm Trustees; and respondents say that this form of representation in the management of the University was and has been recognized by the conferences to be acceptable and sufficient; but

Respondents now aver and say that the University, by the decree by which it was organized and chartered, rendered on August 6, 1872, was given the power of perpetual succession; and that the said twenty-four petitioners were incorporated in their *individual*, and not in any representative, capacity; and that they as individuals were the members and the only members of the University, the corporation; and that, under the established rules of pleading and the laws of Tennessee, the Chancery Court rendering said decree had no power or jurisdiction to confer any rights of control, or of visitation, or of supervision, or of management, or of the election of the Trustees upon any other persons than the twenty-four petitioners named in the face

of the pleadings—that is, in the petition and in the notice of publication, as framed; and

They aver and say that, under the general laws for the incorporation of universities of learning then in force in Tennessee, the said court had no power or jurisdiction by and in said decree to incorporate said twenty-four persons as representatives of conferences, or to incorporate *any but natural persons*, or to confer the powers of management, election of Trustees and control on any other persons than the said twenty-four individuals who were petitioners and applicants; and

They aver and say that, under the general incorporation laws then in force in the State, the court was without authority to embody the Memphis resolutions in the charter of the University, or in any wise to add to or to diminish the powers conferred by the general statutes of the State on corporations of that character; and

They aver and say that, for these reasons, the said decree, in so far as it does, or may assume to, confer upon any other person, company, conference or association than the said twenty-four petitioners any power or authority or control over, or voice in the management of, the affairs of said University, or the election of the Trustees thereof, is mere surplusage, inoperative and *void*; and

They aver and say that whatever of confusion may have existed with respect to the powers of the said petitioners, or of their Board of Trust, and with respect to any rights of control, supervision, nomination, election or management on the part of said conferences, annual and general, and on the part of the College of Bishops, was removed by the said decree of June 16, 1873, which *eliminated* all reference to the “Memphis resolutions;” and

They aver and say that the conferences had knowledge of the amendment of the charter, and that they *acquiesced* therein, and that they are estopped to complain of it; and respondents plead and rely upon this acquiescence and estoppel; and

They aver and say that, as hereinbefore and hereinafter shown, the Board of Trust have consistently maintained throughout that the sole and exclusive power, right and authority to elect Trustees, and to fill vacancies in the Board, were, by and under the charter of the University, vested alone in the

petitioners and their Board of Trust, and that whatever voice the conferences or the General Conference or the College of Bishops may have had in the filling of vacancies in the Board was alone by sufferance—through the permission of the Board given and expressed *in their by-laws and other repealable resolutions*; and

They aver and say that the said conferences and College have no rights whatsoever under the charter and laws of Tennessee to elect or nominate or confirm any Trustee to or of the Board of Trust; that they have no right now, and never did have at any time; and that what they have done in this respect has been done alone by the revocable permission of the Board.

XIV

THE SITUATION AND LEGAL STATUS OF THE UNIVERSITY AFTER THE AMENDMENT OF 1873.

And these respondents now further answering say and show that the situation and status of the University, after the amendment of the charter in 1873, was this:

Vanderbilt University had been founded by Cornelius Vanderbilt, and not by the Methodist Church or any of its conferences; and

The power of self-perpetuation, under the charter, was in the Board of Trust, *the only members of the corporation* which had been organized or created; and

Under the charter the power to fill vacancies in the Board was in the Board exclusively and alone; and

The Board; by repeated resolutions, had asserted this power, and also that it was both exclusive and inalienable—which resolutions it had transmitted to the members of the conferences, and to the Bishops; but

The Board, through by-laws, had allowed the conferences to nominate members of the Board, for the Board's election and confirmation (an arrangement that was altered shortly afterward, as shown hereinabove); and the Board itself had established this arrangement in order to maintain close relations with the Church, to the end that the theological department of the University should be and remain Methodist, and that the Church

and the University should enjoy the benefits of this connection as fully as was consistent with the plan on which the University had been designed, namely, to be a UNIVERSITY of the highest order, on the surest basis, for the education of the youth of the country as well as of the Church, regardless of religious or denominational faith, *as Mr. Vanderbilt, the Founder of the University, desired.*

It is true that there were some who claimed that the authority of the conferences to nominate persons to fill vacancies in the Board was of right, and was not permissive; but even these did not at first contend that it was vested by charter, but claimed, as is done by the resolutions of the Tennessee Conference in reply to the resolution of the Board passed September 30, 1874 (and which reply appears in Section VI of the bill), that it was vested by the terms of certain resolutions of the Board, which were referred to as constituting *a contract* between the Tennessee Conference and Vanderbilt University.

As already shown, the College of Bishops had declined to comply with the request for the establishment of the official relations recommended in the Memphis resolutions; and the working arrangement established by the Board, and hereinabove explained, was operating well.

XV

1882. THE BOARD'S REDUCTION OF CONFERENCE MEMBERS FROM FOUR TO TWO.

Important changes affecting the members of the Board were deemed to be desirable, and were made, at four different times—in 1882, 1888, 1894, and 1896.

It had become advisable by 1882 for the representatives of the annual conferences on the Board to be reduced from four to two members each; and on the 29th day of May, 1882, a committee that had been appointed to consider this matter presented to the Board, through its chairman, *Judge E. H. East*, the following report:

Your committee report contrary to the view it first entertained that this matter was a charter question, that *it is simply a by-law question, the charter being silent on the*

subject; and the whole matter is the subject of by-law VII, and the by-laws may be changed or amended at any annual meeting of the Board by a two-thirds vote of all the members present. Your committee concur in the reduction of the number of the members of this Board, and recommend the following by-law in lieu of No. VII, as it now stands on the minutes, page 108:

“By-Law VII. Each coöperating conference is entitled to two members, one clerical and one lay, in the Board of Trust; and any vacancy which has heretofore occurred, or shall hereafter occur, shall not be filled until the number is reduced below two for each conference, one clerical and one lay; the same to be filled upon the nomination of this Board to the conferences, and be subject to its confirmation.”

This report was adopted, *without the consent of the conferences* being even requested, and thereafter the representation allowed to them was cut in half.

XVI.

1888. THE BOARD'S REDUCTION OF THE TERM OF MEMBERS FROM LIFE TERM TO EIGHT YEARS.

Again, at its annual meeting on June 18, 1888, *President McTyeire* suggested to the Board that the term of the members be reduced from a life term to eight years, and this was done. The committee to whom this suggestion was referred for consideration made to the Board, on June 20, 1888, the following recommendation, which was adopted, namely:

At its annual meeting in 1890 and every two years thereafter the Board shall elect, as now provided for by law, subject to the confirmation of the conferences concerned, members to take the place of those whose terms then expire. The members so elected shall hold their offices for a term of eight years, unless sooner removed for cause, and until their successors are elected and confirmed. When vacancies shall occur they shall be filled as now required by law, but only for the remainder of the unexpired term or terms.

Resolved, That the Executive Committee is hereby directed to take all steps necessary to make the foregoing a part of the organic law of the University.

It is not true, as alleged in the bill, that the Board "recognized that in order to make changes suggested in that report a change was needed in the organic law of the University," for the charter was not changed, and, as already shown, the Board considered the question of the number of representatives which any conference should be allowed as "simply a by-law question," and not a "charter question;" but, if it were otherwise, respondents say that the interpretation placed by the Board on the charter would not be binding either on the University or the courts.

XVII.

1894. THE BOARD'S ACTION MAKING THE BISHOPS AND THE CHANCELLOR EX OFFICIO MEMBERS.

Bishop McTyeire remained president of the Board until his death in 1889. Shortly after his death the claim was made by some that the College of Bishops had certain *charter rights* and duties in the government of the University; and thereupon the question of the relation of the College of Bishops to the University assumed a prominence that it had not before had.

This contention was doubtless due in some measure to a paper entitled "Last Words," prepared by Bishop McTyeire in 1881 (and hereinbefore referred to), and which was read to the Board after his death in 1889, in which he said:

1. I beseech the College of Bishops, as by charter they have a right, to lay their hands on this University for guidance and governance.

2. I request the College of Bishops to keep in steady and constant connection with the University. The trust is worthy of their care.

It has been seen that this was erroneous. The College of Bishops did not have the right by the charter to "lay their hands on," and to control, the University. *The charter did not even assume to confer that right.* The Memphis resolutions had gone no further than to *request* the College of Bishops to act jointly with the Board of Trust in doing certain specified things (of which the filling of vacancies in the Board was not one), and, as

already shown, the College of Bishops *had refused* to comply with that request.

But this declaration of Bishop McTyeire's, made in this solemn way, was accepted by many of the Bishops as an accurate statement of the rights of the College of Bishops under the charter; and some dissatisfaction arose.

The Board of Trust had always appreciated the facts that representative bodies of the Church initiated the steps that brought the University into being, and that the University maintained a theological school for the training of Methodist ministers; and they had cherished this relation of the University to the Church, and had, on this account, in the beginning of their labors, requested the College of Bishops to coöperate with them to the extent indicated in the Memphis resolutions; and so, in 1894, and *as a further evidence of this spirit*, the Board, of its own motion, and by resolution, made all of the Bishops and also the Chancellor of the University members of the Board of Trust, *ex officio*. The resolution was as follows:

Whereas, There is a difference of opinion among the members of the College of Bishops of the M. E. Church, South, as to whether said Bishops are *ex officio* members of the Board of Trust of Vanderbilt University; therefore,

Be it resolved, That the following be, and it is hereby, adopted as one of the by-laws of said corporation, to wit: "Each of the Bishops of the M. E. Church, South, is *ex officio* declared to be a member of the Board of Trust, and the Chancellor of the University is also, by his office, a member of said Board of Trust."

This was done by the Board without any request to the conferences for their approval, and was an innovation believed to be, and which was at the time, in the interest of the University.

XVIII.

1894. THE BOARD'S ACTION PROVIDING FOR NON-CONFERENCE MEMBERS.

At this same meeting in 1894 the Board took another step in the matter of the constitution of its own membership, of its own motion, and without asking the approval of any conference; and

the step was one of importance. It adopted the following by-law:

Whereas, There are now twenty-four members of the Board of Trust of Vanderbilt University, including the present Bishops; therefore,

Be it resolved, That the Board of Trust at its present session do elect four additional members of said Board, without regard to their location in any particular one of the patronizing conferences.

A motion to amend this resolution by adding the words, "by the concurrence of the patronizing conferences," was *rejected* by the Board; and the four additional members were then elected.

As has now been shown, the Board, by virtue of its own powers, without asking the consent or confirmation of any conference, and even refusing to ask for such consent, had thus introduced into the Board three new classes of members, namely:

1. The Chancellor as an *ex officio* member;
2. The Bishops as *ex officio* members;
3. Members selected without regard to the conferences, or members at large.

XIX.

1896. THE BOARD'S FURTHER REDUCTION OF CONFERENCE MEMBERS AND FURTHER INCREASE OF NON-CONFERENCE MEMBERS.

In 1896 the following report, made by a committee appointed to consider the question, was adopted by the Board, namely:

I. We think it very important that Vanderbilt University should be closely allied to the whole Church as the central university of Southern Methodism.

II. We believe that this can be partially effected by increasing the number of Trustees who are elected independently of our eight patronizing conferences.

III. We recommend that the by-laws be amended so as to give *only one representative* to each of the eight patronizing conferences, and that the eight vacancies thus created be filled by the selection of *representative men without geographical limitation*.

IV As the best method of effecting this result, we suggest that, as the terms of present members expire, the Board select one representative for each patronizing conference, and we suggest that each patronizing conference be requested to approve this change in the by-laws, and accept the reduction from two to one representative.

This resolution was submitted to the eight coöperating conferences for approval, and was approved during 1896 and 1897; and thereupon the Board initiated the procedure necessary to reduce the number of Trustees subject to confirmation by the conferences to eight, and it was done; and

The result was that the membership of the Board was increased to thirty-three, and that of these only eight were to be, and were thereafter, confirmed by the conferences.

XX.

1896-1898. TRANSFER OF RELATIONS FROM THE ANNUAL CONFERENCES TO THE GENERAL CONFERENCE.

DR. KELLEY'S REPORT.

One purpose distinctly avowed by the Board of Trust in the above resolutions adopted in 1896 was that Vanderbilt University should be closely allied to the whole Church as the central University of Southern Methodism. The discussion of this matter led to the suggestion that the original method of electing Trustees with reference to the annual conferences ought to be abandoned, and that it would be better for the University to relate itself *directly to the General Conference* of the Methodist Church. This matter was presented by the Chancellor in his report to the Board on June 14, 1897, and was referred to a committee; and the committee on the next day brought in the following report, which was adopted:

We recommend that, in order that Vanderbilt University may be related to the Church as the central university of Southern Methodism, and may assume a connectional relationship to the whole Church as the crowning feature of our educational system, the consent of the patronizing conferences be asked to the proposition that hereafter the Board of Trustees be selected from the entire Church with-

out regard to geographical limitation, and be confirmed by the General Conference.

In order to secure such consent, the Chancellor of the University is requested to submit this proposition to the several patronizing conferences at the next annual session. We furthermore suggest that a resolution be submitted to the next General Conference, asking the adoption of this University as the central institution of the M. E. Church, South.

This change was designed by the Board for the benefit of the *University*, and, as its results would be to terminate all direct relations with the annual conferences, it was deemed to be, and was, expedient to have their friendly concurrence. In accordance, therefore, with the instructions given him, the Chancellor presented this matter to the annual conferences in the fall of 1897, and all of them consented at once, except the Louisville Conference, which gave its consent a year later.

In considering this matter, *the Tennessee Conference* had before it an extended report from the Committee on Education, of which H. B. Reams was chairman, and D. C. Kelley secretary; and this report, which respondents believe was prepared by *D. C. Kelley*, reviewed the history of Vanderbilt University from its beginning—a task for which Dr. Kelley was especially suited, in view of his intimate relation to the enterprise at all times. The following paragraphs of that report are illuminating as to the views and attitude of the Committee on Education and of the conference which adopted their report:

The original Board of Trust was nominated by the Memphis Convention, in January, 1872. *The charter gave the Board of Trust full power of control and full power of self-perpetuation.* When, therefore, at a later date, the Board, fearing that conference control might not be to the best interest of the University, asked to be released from the contract before entered into by which the nomination of the members of the Board was placed with the conferences, the Tennessee Conference, knowing that the only hold the Church had upon the management of the University was the power of the annual conferences to select their own representatives, declined to annul this contract, but consented to a modification, agreeing to transfer the right of nomination to the Board on condition that said nominee should not take his seat as a member of the Board and rep-

representative of the conference until "confirmed by the conference."

We are informed and believe that the Board of Trust has paid no attention to the action of the conference in this regard; that when vacancies have occurred successors have been elected, and they have at once taken their seats.

We beg leave to say to the conference, and through you to the Church at large, that the abrogation of the contract right to allow the conferences a voice in the appointment of members of the Board of Trust leaves the Church without any power to control the management of the University. *The charter gives the right of management exclusively into the hands of the Board of Trust, and the law confers upon the Board the power of self-perpetuation, which power it may exercise without reference to any action had by any Church body whatsoever.*

Pursuant to the instructions of the Board, a committee was appointed to present the proposed changes to the General Conference, in session at Baltimore in 1898, which the committee did in the form of the following *memorial*:

To the General Conference of the Methodist Episcopal Church, South, in Session in Baltimore, May, 1898:

The undersigned, constituting a committee appointed by the Board of Trust of Vanderbilt University to make a special report to the General Conference of the M. E. Church, South, beg leave to present this communication with reference to the University and its relation to the whole Church. Vanderbilt University, as is well known, has heretofore been the central institution of eight patronizing conferences. The title to the property is vested in a Board, to be held in trust for these conferences of the Methodist Episcopal Church, South. For several years the Board has had under consideration a plan to make the University entirely connectional and relate it directly to the whole Church. The plan proposed is to have the patronizing conferences transfer their rights in the University to the General Conference, and to have the General Conference by proper resolution accept the patronage of the University, and consent to assume toward this enterprise the same relation heretofore held by the separate conferences. The Board of Trust has officially expressed its approval of this plan, and most of the patronizing conferences have done the same thing.

By the charter of the University the Board of Trust is vested with the power and obligation to fill its own vacancies but the election of any member is not valid under the

law of the University until said member has been confirmed by the conference which he is designed to represent. Under the new plan the Board would be at liberty to select its members without geographical restrictions of any kind, and the General Conference would confirm or reject the appointment. This duty could be exercised either by the General Conference as a body, or it could be delegated by the Conference to some board, itself the creature of the General Conference. Naturally the Board of Education will be thought of in this connection. This Board meets every year, and is likely to be charged more and more with the oversight of our institutions of learning. It is now trying to devise methods for correlating all our colleges and universities, and it would be appropriate for the General Conference to exercise its control of Vanderbilt University largely through the Board. In that manner vacancies in the Board of Trust of the University could be filled every year, and it would not be necessary to wait four years for action that might be promptly needed.

As a committee, therefore, of the Board of Trust of Vanderbilt University, we beg to present this matter to the General Conference, and invite such action as may be adjudged right and proper.

A. W. WILSON,
CHARLES B. GALLOWAY,
EUGENE R. HENDRIX.

The action of the General Conference in response to this communication was embodied in the following two resolutions, to wit:

First: That the General Conference of the M. E. Church, South, hereby accepts *the proposed relation and control* of the Vanderbilt University, and commits to the General Board of Education the confirmation of all Trustees selected by the Board of Trust of Vanderbilt University.

Second: That this resolution take effect as soon as the consent of all the present patronizing conferences has been obtained, all necessary legal steps taken, and preliminary details arranged.

XXI.

NATURE OF RELATIONSHIP THUS ESTABLISHED WITH THE GENERAL CONFERENCE.

Respondents now aver and show that previous to the year 1898 the General Conference had borne no relation to Vanderbilt

University, and that the relationship established in that year was *solely* by virtue of the arrangement expressed in the foregoing memorial and resolutions.

Respondents further aver and say that no general control of the University passed to the General Conference by the terms of the memorial; and that the nature and extent of the relation thereafter to be maintained by the General Conference was therein specifically set forth; and that it was only the "*proposed* relation and control" that was accepted by the General Conference in the resolutions passed by that body. By entering into this arrangement the General Conference *acceded to and accepted* the following propositions:

(a) That, under the "charter," the Board was "vested with the power and obligation to fill its own vacancies"—that is, to elect its successors; and

(b) That, under a "law of the University"—that is to say, a by-law of the Board, and *therefore revocable*—the election of some of the Trustees had theretofore been confirmed by the annual conferences; and

(c) That, under the new arrangement, the right of the Board to elect its successors was to, and must, remain unimpaired; but

(d) That the confirmation of Trustees was in future to be committed to the General Conference, or to its representative, the General Board of Education.

As the proposed arrangement fixed no time for its continuance, its duration was to be determined by the will of the parties concerned, and it could be discontinued by either of them. Respondents aver that this arrangement was scrupulously observed by Vanderbilt University, and by its Board of Trust, and that no effort to change it was made by them until after the meeting of the General Conference of 1910, when it was abrogated by the vote and action of *the General Conference*. After this abrogation of it, and only thereafter, the Board of Trust amended its by-laws and *abolished that by-law* requiring the Trustees after election by the Board to be confirmed by the General Conference.

The annual conferences had never been, and had never claimed to be, members of the corporation; and the General Conference *succeeded* only to the relations which had been main-

tained by *them*, and did not and could not become a member of the corporation; and the whole theory of membership, as claimed in the bill, remained unexpounded and unheard of until the decision of the O'Rear Commission, hereinafter mentioned.

XXII.

1905. THE BOARD'S RESCISSION OF THEIR ACTION IN MAKING THE BISHOPS EX OFFICIO MEMBERS.

Respondents further answering say and show that from 1894, when the Bishops were made *ex officio* members of the Board, until 1905 they and the Chancellor of the University acted as members *ex officio* of the Board, participating with equal voice in all of its acts and deliberations; but

This arrangement was found to be inexpedient for the reason that the number of Bishops of the Church—some of whom evinced very little interest in the University—was being increased, while the number of Trustees was limited by law, so that the Board were at times prevented from filling vacancies as they had been previously filled, and were finding themselves unable to grant to *the alumni* of the University the reasonable representation in the Board that the latter *were entitled to, and were requesting*. The alumni had proven themselves loyal and devoted, and an increasing number of them were becoming eminent in the world's affairs, and they believed that they were entitled to a voice in the government of the University such as was accorded to the alumni of other institutions; and the members of the Board, including the Bishops, concurred in the view that their request ought to be regarded.

Accordingly, in 1905, the by-law making the Bishops and the Chancellor *ex officio* members was *rescinded*, and thereupon the Chancellor and five Bishops of the Church, chosen in the order of seniority from the College of Bishops, were elected to be *members proper* of the Board. That which was done is shown in the report of the committee appointed to consider the question, which was adopted, and which is as follows:

Your committee to whom was referred that part of the Chancellor's report relating to the charter of Vanderbilt University, after taking legal advice and having also the

counsel of Bishop A. W. Wilson, who has given much thought to the matter, unanimously recommend that the Executive Committee be authorized to get the signatures of all the members of the Board of Trust to the form of application provided by the laws of Tennessee, and to file said application with the Secretary of State for the desired amendment to the charter.

To give full membership in the Board of Trust to some who are *ex officio* members, we recommend the adoption of the following resolutions:

"*Resolved*, That we hereby rescind the by-law making the Chancellor of Vanderbilt University *ex officio* a member of the Board of Trust, and the Bishops of the Methodist Episcopal Church, South, *ex officio* members of said Board.

"*Resolved*, That we hereby nominate to the Board of Education of the Methodist Episcopal Church, South, for confirmation as members of the Board of Trust, the Chancellor of Vanderbilt University and five of the effective Bishops of said Church, chosen in the order of seniority, and that the Chancellor be placed in that class of members whose terms expire in 1914, and that the Bishops be distributed according to seniority in the classes whose terms expire, respectively, in 1914, 1912, 1910, 1908, 1906."

Respectfully submitted,

E. R. HENDRIX.

W. C. RATCLIFFE.

W. W. DUNCAN.

J. H. KIRKLAND.

CHARLES B. GALLOWAY.

The proposed charter amendment above referred to was not made, but all of the members of the Board signed an application for it; and the circumstance is significant as showing that the power of the Board to have the charter amended upon their own application, and without submitting the proposed amendment to the General Conference, was *not doubted* at the time by many of the Bishops who *now* complain that it is a usurpation of power for the Board even to fill a vacancy in its own body.

XXIII.

1906. THE VANDERBILT COMMISSION AND ITS REPORT.

The foregoing action of the Board was disapproved of by certain persons influential in the Church, but not members of the Board, and thereupon some of the conferences that had been

confirming the election of members regarded as their representatives, and whose authority to so confirm under the by-laws had never been either denied or disregarded by the Board, were influenced to memorialize the General Conference to be held at Birmingham, Alabama, in 1906, on the subject, with the result that the General Conference took the action expressed in the following resolutions:

There can be no question as to the ownership of the University by the Methodist Episcopal Church, South, or as to the charter rights of all the Bishops; but, in view of certain questions which must be authoritatively decided, we recommend the appointment by this General Conference of a Commission of five laymen of the Methodist Episcopal Church, South, as follows:

1. To inquire into and determine the present relations of the Vanderbilt University to the Methodist Episcopal Church, South.

2. To take legal steps, if necessary, to perfect the transfer of the University from the patronizing conferences to the General Conference of the Methodist Episcopal Church, South.

3. To define the charter rights of the Bishops of the Methodist Episcopal Church, South; and, when so defined, the Bishops are hereby instructed to enter on the same.

4. We recommend that this Commission be composed of the following gentlemen: Judge Edward O'Rear, Frankfort, Ky.; Judge John A. Rich, Slater, Mo.; Judge E. D. Newman, Woodstock, Va.; Judge Joseph A. McCulloch, Greenville, S. C., and Hon. Creed Fulton Bates, Chattanooga, Tenn. This Commission shall have power to fill any vacancy in its membership.

5. This Commission is instructed to proceed in this matter as early as possible, and they shall communicate the result of their deliberations simultaneously to the College of Bishops, the Board of Trust of Vanderbilt University, and the General Board of Education.

6. The General Secretary of the Board of Education shall act as Secretary of this Commission to notify its members of their appointment, to conduct all necessary correspondence and to gather all available data bearing upon the above matters.

7. We recommend that the expenses of the Commission be paid by the General Board of Education.

Touching the memorial from the Tennessee Conference, which requested the General Conference to inquire into the state of the proposed charter and to counsel with the Board

of Trust thereon, we report that we have been informed by the representatives of the Board of Trust: "No action for amending the charter is pending, and that nothing can be done at any time in the future without the unanimous consent of the members of the Board." We recommend in case of any future charter or amendment that the present existing rights of the Methodist Episcopal Church, South, and the Bishops thereof be preserved.

It cannot fail to be observed that, in the preamble to these resolutions, the General Conference declares that "there can be no question" about *the very matters* which it then refers to the Commission for determination.

Pursuant to these resolutions the Commission organized and elected the said *Judge Edward C. O'Rear, chairman*, and held sessions at Nashville in August and October, 1908; and, as stated in the bill, the Commission thereafter expressed in a written report the result of their consideration of the matters submitted to them.

The following is a more accurate statement than that given in the bill of the conclusions reached by that Commission as set forth and shown in their report. The Commission found and reported:

(a) That *the petitioners* who applied for and obtained the charter of the University, and who were thereby declared to be the "body politic and corporate," were *not the members of the corporation*, but that the Memphis, the Tennessee, the White River, the North Alabama, the Alabama, the Mississippi, the Louisiana and the Little Rock Conferences of the Church were the real members of the corporation created under the name of The Central University of the Methodist Episcopal Church, South; and

(b) That the University was *not founded by Mr. Vanderbilt*, but by the annual conferences represented at the Memphis Convention; and

(c) That *since 1898 the General Conference*, as assignee of these annual conferences, *had been the member, and the sole member, of the corporation*, The Vanderbilt University, and as such had succeeded to, possessed and enjoyed the powers of the corporation; and

(d) That *the Trustees* of the University, though denominated the corporation by the Chancellor, in reality *are and were*

not even members thereof, but are and were agents, at first of the annual conferences, and then of the General Conference—a mere executive committee selected and appointed by these conferences; and that these conferences had and have full power, authority and control over the Board of Trust, their committee or agents; but

(e) That, while *the Bishops* had no authority in law or power under the charter *as members*, either of the corporation or of the Board of Trust, and either alone or jointly with the Board, or as members *ex officio*, nevertheless

(f) That, by virtue of resolution No. 9 of the Memphis resolutions, made part of the charter, *the Bishops* were *visitors* of the University, with common law visitorial powers; but

(g) That, so long as the Board of Trust did not violate the law of the State, or the charter, or the purposes of “the settlers of the trust,” the Bishops could not interfere with the internal management of the University under their visitorial powers, and that conversely (by necessary implication) they could interfere upon every such violation.

These conclusions, of course, were accepted by the conferences, and approved accordingly; but

XXIV

REPORT OF VANDERBILT COMMISSION NOT ACCEPTED BY THE UNIVERSITY.—JUDGE O'REAR'S COURSE AT THE ASHEVILLE CONFERENCE.

The statement in the bill that the University upon receiving the report of this Commission (for it did receive one) “accepted the same and acquiesced therein” is *misleading and inaccurate*, as the resolution of acknowledgment set out in the bill shows. That resolution is as follows:

Whereas, the General Conference of the Methodist Episcopal Church, South, in session at Birmingham, Alabama, May, 1906, appointed a Commission to report upon the following matters:

1. To inquire into and determine the present relations of the Vanderbilt University to the Methodist Episcopal Church, South;

2. To take legal steps, if necessary, to perfect the transfer of the University from the patronizing conferences to the General Conference of the Methodist Episcopal Church, South;

3. To define the charter rights of the Bishops of the Methodist Episcopal Church, South;

And whereas the Commission has concluded its labors and reported the result of its deliberations to the Board of Trust of Vanderbilt University:

Resolved, 1. That we cordially receive the same, and direct that it be filed with the records of this Board.

2. That we hereby express our appreciation of the ability and fidelity with which the members of the Commission have discharged their important duties.

3. That, recognizing and rejoicing in the ownership of the Church in the University and all the responsibilities arising therefrom, we welcome any supervision by the College of Bishops that may aid us in executing the great trust committed to our hands so as to insure the observance of the charter, the conditions of specific gifts, and the statutes of the State.

It expressly declares that *we, the Board of Trust*, "welcome any supervision by the College of Bishops that may aid *us* in executing the great trust committed to *our* hands, so as to insure the observance of *the charter*, the conditions of specific gifts, and *the statutes of the State*."

Respondents aver and say that, ever since the Commission made its report, one of the complaints brought against the Board by the relators has been that the Board would not accept or accede to the findings of the said Commission; and that this they well know.

Indeed, the error of the statement in the bill is conclusively shown by the proceedings had at the General Conference, held at Asheville, North Carolina, in May, 1910, to which the report of this Commission was presented. Their report was referred by the Conference to its Committee on Education, of which *the said Judge Edward C. O'Rear*, chairman of the Commission, was the chairman; and in a communication from the said O'Rear, as chairman of said Commission, to *Bishop Hendrix, president of the Board of Trust of the University*, on the 16th day of May, 1910, and during the session of the Asheville Conference, he said, among other things:

The status recognized and set out in the resolutions of the General Conference held at Baltimore in 1898, by which the Board of Trust of the University continue to elect, subject to the confirmation of the Board of Education of the Church, members of your Board as vacancies occur, *is wise and legal, and should be continued.*

But in this communication it was also said that:

to effectuate the foregoing we agreed, you on behalf of your Board, I on behalf of the Committee on Education of this General Conference, that the said committee should report to the General Conference the approval of the foregoing on these precedent conditions:

(a) *The Board of Trust of Vanderbilt University is to be called by you in immediate session, to convene in Asheville, if your by-laws do not prohibit, or at Nashville, Tennessee, otherwise, where it will officially place on its records and promulgate to this Conference a resolution of the following tenor:*

“Whereas, the import of a resolution of this Board, adopted concerning the report of the Vanderbilt Commission authorized by the General Conference of 1906, has been misconceived, and in consequence there is some doubt in certain conferences of the M. E. Church, South, as to the attitude of this Board concerning said report: Now, *be it resolved*, That this Board *does hereby accept* the findings and conclusions of the said Commission as set forth in their said report, as *correctly* defining the relation of this University to the Methodist Episcopal Church, South, as well as *correctly* defines the legal rights of each of them respecting the ownership, control and management of said University. *Resolved*, second, That a copy of this resolution be sent to the General Conference of the M. E. Church, South, now in session at Asheville, N. C.”

To this communication Bishop Hendrix, the president of the Board of Trust, replied that, in his opinion, the Board would go to the utmost limit in accepting the report of the Commission, provided that it was expressly agreed that the Board should always be allowed to keep fully within its rights and its duties *under the laws of Tennessee*, by virtue of which it existed; but

The said *Edward C. O'Rear*, as chairman of said Committee of the General Conference of 1910, refused to accede to this, and demanded that the Board of Trust of the University should un-

qualifiedly accept the said report made by the Commission of which the said *Edward C. O'Rear* had been the chairman, and admit and agree that such report correctly states and defines the legal rights and limitations of the Board of Trust; but to this neither President Hendrix nor the Board could agree.

The matter was then discussed by the said *Edward C. O'Rear* before the General Conference, and, among other things, he then and there said:

They are unwilling to come to the point and say, if requested by your committee, that they are willing to accept that report of the Commission as defining the rights of the respective bodies concerning that University. Now why are they not willing to do that? They will go a little further than they have gone. There is an issue. Now he says the only point sought to be safeguarded is that the Board keep fully within their rights and duties under the laws of Tennessee. *What rights have the Board of Trust under the laws of Tennessee that can possibly be in conflict with the rights of the Methodist Episcopal Church, South?* It is that insinuation which has crept out time and again that the Board of Trust have rights respecting that property inconsistent with the rights and authority of the Church—higher than that Church. It is this that has created that unrest. Can it be that any creature of the Church is wiser and better than the Church? Is safer as a repository of title and of power and authority than the whole Church? I have always understood that everybody had more sense than anybody.

Wherefore respondents aver and repeat that the statement in the bill that the Board of Trust of Vanderbilt University “accepted” the said report and “acquiesced” therein is untrue; and they further aver and say that, if the Board had done so, their action would have been inoperative, *ultra vires*, and not binding on the University in any way. And such invalidity respondents plead and rely upon; and

XXV

MAY, 1910. THE ACTION OF THE ASHEVILLE CONFERENCE THAT
BROUGHT ON THIS LITIGATION.

Because the Board of Trust and the corporate officers of the University, in response to the demand of the Committee, of

which the said *Edward C. O'Rear* was chairman, declined to agree that the corporation of Vanderbilt University should be bound by the findings and conclusions of the Commission, of which the said *Edward C. O'Rear* was chairman—*which findings and conclusions these respondents aver were erroneous and contrary to the laws of Tennessee*—the said *Edward C. O'Rear* brought in and secured the adoption by the General Conference of the following resolution :

Resolved, first, That this General Conference hereby accepts the report of the Vanderbilt Commission as a definition of the rights of the Methodist Episcopal Church, South, to Vanderbilt University; moreover, that it accepts the judgment of the Commission that the College of Bishops is a Board of Common-Law Visitors of the University; and, furthermore, that it accepts the finding of the Commission that the General Conference has the right to select the Board of Trustees in such manner as it may elect, either by direct election by the Conference itself or through such agency or agencies as it may designate.

Resolved, second, That it is the sense of this General Conference that its right to select the Board of Trust of Vanderbilt University and fill vacancies in the same should now be exercised, and hereafter at its discretion; and, it being ascertained that vacancies now exist in the Board of Trust of said University, the following named members of the Methodist Episcopal Church, South, are hereby elected to fill said vacancies, namely :

Resolved, third, That following this election the General Conference will *for the future* continue the method of choosing the Trustees adopted by the General Conference held at Baltimore in 1898, when it committed "to the General Board of Education the confirmation of all trustees selected by the Board of Trust of Vanderbilt University."

Resolved, fourth, That the General Conference approves the action of the Bishops in entering upon the discharge of their duties as visitors of the University.

Resolved, fifth, That the General Conference approves as a sound principle of law the position of the College of Bishops, namely, that "it is not competent for the Board of Education to delegate the functions intrusted to it by this General Conference to any other body or person whatsoever;" and the General Board of Education is hereby instructed to accede to the request of the Bishops—namely, that *hereafter* said Board will confirm no persons as Trustees of Vanderbilt University except such as may be

officially nominated to the Board of Education of the Methodist Episcopal Church, South, in writing by the Board of Trust of Vanderbilt University.

Resolved, sixth, That the Board of Education of the Methodist Episcopal Church, South, shall provide *whatever means* may be necessary to sustain the finding of the Vanderbilt Commission if it shall at any time be called in question *in the civil courts*. In such event the Bishops of the Church are hereby instructed to take whatever steps they may deem necessary to maintain the rights and claim of the Church.

At a subsequent day of the session of the said General Conference, the said *Edward C. O'Rear*, as chairman of the said Committee on Education, brought in and secured the adoption by the General Conference of a resolution increasing the annual assessments for "education" in the sum of *twenty-five thousand dollars*, to be used by the said Board of Education at its discretion—the said *Edward C. O'Rear*, chairman thereof, explaining that one of the purposes of the resolution was *to provide funds to prosecute the litigation* contemplated by the sixth of the foregoing resolutions; and

It is true that the General Conference aforesaid subsequently inserted in the blank space after the word "namely" in the second of said resolutions the names of the relators, *Messrs. Godbey, Harris and Biggs*, and that they and the other relators have ever since claimed and pretended that said three persons named were then and there elected and constituted members of the Board of Trust of the University, without any action whatsoever by or on the part of said Board.

Inasmuch as in these very resolutions, as also in the statement made by the said *Edward C. O'Rear* to the president of the Board, hereinabove quoted, the plan of confirming Trustees heretofore followed was expressly *approved*, it is apparent that the pretended election by the General Conference of *Messrs. Godbey, Harris and Biggs* was for *the sole purpose* of making an issue, and of thereupon instituting this suit; and

Respondents aver and say that no controversy was ever more needlessly begun and prosecuted, since, in the hands of the Trustees who have directed its destinies in the thirty-eight years of its history, the University has prospered and grown great; and since no complaint has been, or is now, made that those

selected to administer this trust are unfit, or that they have not administered it wisely, but the only grievance is that the Board will not relinquish to the Church a power that the Board have *always* exercised, and that the Church has heretofore never even thought to claim; and

XXVI.

JUNE, 1910. ACTION OF THE BOARD OF TRUST OF VANDERBILT UNIVERSITY.

It is true that Messrs. Godbey and Harris appeared before the Board on June 11th, 1910, and for themselves and Mr. Biggs demanded to be admitted as members of the Board of Trust, by virtue of the said pretended election; and it is true that the Board thereupon adopted the following preamble and resolution, namely:

Whereas, the General Conference of the Methodist Episcopal Church, South, at its recent session at Asheville, North Carolina, selected three members to act as members of the Board of Trust of Vanderbilt University; and

Whereas, some of these gentlemen are now present presumably claiming membership in this Board; and

Whereas, it is the duty of *the Board itself* to determine the question as to the right of these gentlemen to sit as members; therefore, be it

Resolved, That the Chair appoint a committee of seven to investigate the subject and make its report tomorrow morning at 9:30 o'clock, with recommendations as to the proper mode of procedure.

And it is further true that on the next day the Board rejected the claim of Messrs. Harris, Godbey and Biggs, and adopted the report of the committee, which was as follows:

Your committee assembled heard full statements from Messrs. N. E. Harris and V. A. Godbey, and gave a careful consideration to the whole subject. The majority of the committee now report as follows:

"We are of the opinion that the General Conference acted *without lawful authority* when it undertook to elect members to fill vacancies existing on the Board of Trust.

"We are further of the opinion that it is the duty of present members of this Board by election to fill all

vacancies thereon which may now exist, or which are about to occur by the expiration of terms of service; and that the parties so elected, upon acceptance, will thereupon become members of the Board without more. We therefore recommend:

“1. That the by-law of 1906 concerning the mode of election of Trustees and their confirmation be *amended* so that it shall read as follows:

“‘All vacancies on the Board of Trust shall be filled by the election of the Board. The terms of members shall be for eight years unless sooner removed for cause, but all members shall serve until their successors are elected.’

“2. That the Board proceed to elect members to fill the vacancies now existing, and also those which are about to occur by the expiration of the terms of office.”

Respectfully submitted,

W T. SANDERS, *Chairman.*

W L. MOOSE, *Secretary.*

ELLIOTT H. JONES.

J. C. McREYNOLDS.

CHARLES N. BURCH.

W C. RATCLIFFE.

In accordance with this resolution the Board proceeded to elect members to fill certain existing vacancies, and thereupon elected as members of the Board the respondents, Claude Waller, J. A. Robins and R. F. Jackson, all of whom accepted their election, and entered on the discharge of their duties as such members; and

It is true, as respondents are advised, that thereafter the Bishops met and passed certain resolutions asserting that the Board were without authority to fill vacancies in their body, and assuming, in the capacity of visitors, to declare this action of the Board null and void.

XXVII.

THE BOARD POSSESS, AND HAVE ALWAYS EXERCISED, THE POWER
OF SELF-PERPETUATION.

Respondents could not sufficiently reply to the allegations of the bill, and could not accurately present an outline of the history of the University, and a true conception of its corporate

quality and attributes, without this lengthy narrative of fact, the result and effect of which is to show, aver, and say that:

1. Under and by virtue of the laws of Tennessee and the charter of the University, the petitioners, as individuals, and such other persons as they subsequently elected to be Trustees, and they alone, were and are *the members* of The Vanderbilt University; and

2. Neither any annual conference nor the General Conference of the Church is or ever was a member of the corporation known as The Vanderbilt University, *nor could be* under the laws of Tennessee, because a member of such a corporation must be an individual natural person; and

3. The sole and exclusive power to fill vacancies in the Board of Trust of the University is in the members of the Board, who are the only members of the corporation; and

4. The Board have consistently and continuously asserted and maintained this right, and have never at any time conceded it to any other person or association; and

5. The Board have, throughout, *voluntarily* sought to establish and maintain an intimate relation with the Church, and have provided for such relation by *by-laws* giving a right of confirmation of Trustees to the annual conferences, and later to the General Conference; and the Board did not sever this relation, and did not repeal these by-laws, until the General Conference at Asheville in May, 1910, assumed to deny the power of the Board to fill vacancies, and assumed to assert and declare that such General Conference was vested with the sole and exclusive power to do so, and until, in furtherance of this novel declaration, the General Conference assumed to "elect" three persons to be members of the Board of Trust, and to try to raise a large fund to institute and prosecute a suit against the University; and then, and not until then, the Board withdrew their permission to the General Conference to confirm the election of Trustees.

XXVIII.

THE BISHOPS HAVE NO VISITORIAL POWER.

And to that part of the bill which avers that the Bishops of the Church were and are clothed and vested with visitorial power to "judge whether the acts of the Trustees are within the

law of the institution, and whether their by-laws are in the spirit of the trust," respondents answering say that the Bishops are not visitors of the University, and that they have no visitorial power over it of any kind whatsoever; and this for the following reasons, among others, namely:

(a) Under *the laws of Tennessee* in force since the Constitution of 1870 was adopted, there is no such person or thing in Tennessee as a common-law visitor in respect of an educational corporation, and there cannot be, for the reason that the sole and exclusive power of management and control is vested by the general corporation laws in the members of the corporation, the petitioners incorporated, and in such other persons as they may elect members, and in the trustees or directors that they may appoint; and

(b) At *the common law* there was not any such person or thing as the visitor of a corporation, the members, trustees or incorporators of which were *not the beneficiaries* of the funds or property possessed, held or administered by such corporation; and Vanderbilt University was created as an educational corporation, and not for business or profit, and neither its incorporators, Trustees or members are the beneficiaries of its funds or property, and if, for any reason, it should refuse to continue the educational purposes for which it was created by the State, its property *would not revert* to them, but the corporation would be required under the law to transfer such property to some other educational institution of like character, and then to dissolve; and

(c) If the rule were otherwise, and if the University could, under its charter and the laws of Tennessee, have common-law visitors, the College of Bishops are not such visitors because *they did not found the University*, or have any part in its establishment and creation; and because they *were not appointed to be visitors by the founder* or founders of the University; and because, even if it could be said that the delegates to the Memphis Convention, or the annual conferences which appointed them, were the founders of the University, nevertheless the Memphis resolutions do not, nor do they assume to, constitute the College of Bishops the visitors of the University, but on the contrary merely *request* the College of Bishops to act as a "board of supervision"—whatever that may be—and jointly with the

Board of Trust to do certain specified things; and because this request the College of Bishops refused to accede to and declined; and

Respondents further aver and say that, even if the Bishops had been common-law visitors of the University, they have had full knowledge of all of the actions of the Board, and have *never* heretofore in the history of the University either exercised or claimed the rights of visitors; and respondents therefore say that the Bishops are bound by this waiver and acquiescence, and ought not now to be permitted to assert such rights; and

XXIX.

CORNELIUS VANDERBILT, AND NOT THE METHODIST CHURCH, WAS THE FOUNDER OF THE UNIVERSITY.

Respondents are advised and aver that under the common law no one except the founder of a charitable institution, or some one by him thereunto appointed, has the right to exercise visitorial power over a charitable institution.

Respondents admit that Vanderbilt University had a founder, but they deny that the annual conferences, or the members of the Memphis Convention, or the College of Bishops, or the Church, were, or that any one of them was, the founder thereof; but

Respondents are advised, and therefore aver and say (without at present stating what the rights and powers of "founders" are in Tennessee) that the founder of a university such as Vanderbilt University is that person who made, and from whom the University received, its first donation for the uses and purposes of its incorporation, and that, therefore, *Cornelius Vanderbilt* was the Founder of this University, and no other person or body.

The University was incorporated on the 6th day of August, 1872, and Mr. Vanderbilt's donation was proffered on the 17th day of March, 1873, and was accepted by the University nine days thereafter, and the fund was paid over by Mr. Vanderbilt to the University; and

It is true, as stated in the bill, that, at several of the annual conferences held in the fall of 1872, resolutions were adopted inviting Dr. Green, the treasurer of the Board of Trust, to visit

their people, and requesting the Bishops to appoint agents to solicit funds for the University, but it is equally true that not one of the agents ever either reported, or paid over, to the University any funds or money so obtained, prior to Mr. Vanderbilt's donation; and

Neither the General Conference, nor any annual conference, nor the College of Bishops, nor the Church, as such, gave or donated anything to the University *prior* to Mr. Vanderbilt's donation. Individuals, some of whom were members of the Church, and some of whom were not, have made donations as individuals to the University since that date.

Wherefore respondents say that it is not true that the University was founded by the Church, or by the annual conferences, or by the College of Bishops, but that it is true that it was founded by Cornelius Vanderbilt; and

XXX.

THE CHURCH DID NOT ESTABLISH, AND HAS NOT MAINTAINED, THE UNIVERSITY.

Respondents further aver and say that the statement in the bill that "said University was established by and has been maintained by said Church" is untrue, and that the allegations in the bill respecting the manner in which the endowment and property of the University were acquired are *inaccurate and misleading*.

In the *year* that elapsed after the adoption of the Memphis resolutions, and during which the annual conferences held their customary fall meetings, they neither contributed themselves, nor procured others to contribute, to the fund that was required for the University, and, when the Board appointed financial agents in January, 1873, the corporation was without any funds or property. Thereafter the conferences did not again meet until the following fall, many months after Mr. Vanderbilt's gift had been accepted, and after the name of the University had been changed; so that the statement in the bill that the agents visited and addressed the conferences "and at most of them received liberal contributions" *refers to a time after the University had been endowed by Mr. Vanderbilt*, and is there-

fore true only in a sense different from that in which it seems to have been intended to be understood. Moreover, these "liberal contributions" were not made by the conferences, but by public-spirited individuals—many, but not all, of whom were Methodists—who were deeply interested in the subject of education in the South; and the statement or intimation that they were made by the conferences is misleading and untrue.

It has been shown that Chancellor Garland stated in an address on May 27, 1876, that "agents were appointed who entered diligently and faithfully upon the work, but the results showed that the object could not be accomplished;" and that in the preface to a pamphlet giving an account of the dedicatory exercises Bishop McTyeire declared that the scheme "was already, in the judgment of some of its warmest friends, a failure," and that "at this crisis Mr. Vanderbilt came to their help," and "by his princely gift gave form and substance to the plan."

The averment in the bill that "citizens of Nashville, most of whom were Methodists, in a meeting gotten up by Methodists, raised the first money, amounting to about \$27,000, to purchase grounds for the University is true only in that it was the first money in the *South*, but it was after Mr. Vanderbilt's gift had been accepted; and the statement is further inaccurate in giving it the character of a Methodist contribution, for it was given by the citizens of Nashville, in response to public appeals to them *as citizens*, and not as Methodists. The following quotation from the issue of April 1, 1873, of the *Republican Banner*, a newspaper then published in Nashville, will show the character of appeal that was made:

Now let Nashville and the vicinity wake up. This affair means business. The house is going up somewhere, and now who is going to move first and offer the ground? Who will furnish the needed fifty acres? Shall Nashville have the building, or her fair sister over the river? We of Nashville need not think we can have it all our own way. Lively little Edgefield, we understand, is already moving in the matter, and, if Nashville gets it, she will have to do the handsome thing, or Edgefield will beat her. We anticipate some lively work before the cornerstone is laid.

Moved by that spirit the sum of over \$27,000 was contributed by citizens, many of whom were not Methodists, and was used in part payment for the grounds included in the campus of the

University; but the remainder of the cost of the lands and first improvements, amounting to over one hundred thousand dollars, was paid out of Mr. Vanderbilt's first gift; and

The facts as to the contributions represented by "notes," and alleged in the bill to amount to "over \$100,000," are these: Notes were executed by numerous persons, most, but not all, of whom were Methodists, for over \$100,000 in the aggregate, but they were obtained and reported *after* the Vanderbilt donation. The reports of *the agents* appointed for this purpose were made in *January*, 1874, and showed that the whole amount of the subscriptions obtained by them was under \$50,000, and that of this only \$32 was in cash, and that the University was *indebted to them in the sum of \$6,000 for their services*. A compromise was made with them, by the terms of which they agreed to reduce their demands, and to postpone them until sufficient funds should be derived from the subscriptions to pay them; except that \$1,000 was advanced by members of the Board to further this compromise. The whole amount eventually received, and after some years, from these subscriptions—which were increased to about \$100,000—was *approximately* \$14,000, and this was in the beginning put into a "Sustentation Fund" to support, and defray the general expenses of, young men attending the University and studying for *the Methodist ministry*, and it has never been used for any other purpose.

It is admitted that in consequence of a disastrous fire at the University a large sum of money was subscribed by the citizens of Nashville for the aid of the University, but respondents aver that this money was subscribed at a patriotic gathering of citizens, regardless of creed, and that *the meeting was not in any sense a Methodist meeting*, and that so far as respondents know none of the subscriptions to this fund were asked or made upon any representation that the University was a Methodist school; and

It is also true that certain contributions were made to the theological department of the University by former students of that department, and from a fund known as the Twentieth Century Fund, but respondents aver that the aggregate of these gifts was less than \$70,000, and that on the other hand the income of more than \$200,000 has been and is appropriated to the maintenance of this department, and that *the greater part of*

this has been derived from the gifts of the Vanderbilt family, and that for thirty-five years this fund has afforded a biblical education to the young ministers of the Methodist Church; and

It is true that, since 1873, various donations have been made to the University, all of which cannot be considered in detail here. One other may be mentioned because of the prominence it receives in the bill—that of Mrs. Mary H. Furman. It was not made for the controlling reason that Mrs. Furman was a Methodist, but the suggestion that she make the bequest originated with a former student of the University, a member of the Baptist church, and a friend of Mrs. Furman, and her principal motive, as her will shows, was to erect *a monument to her husband* and family which would at the same time advance the cause of education in Tennessee.

And so respondents aver that the University was not “established” and has not been “maintained” by the Church or by any conference. The idea or scheme undoubtedly originated with certain annual conferences, but it did not materialize until it was taken hold of, and vitalized, by Mr. Vanderbilt (who was not a Methodist), and made a reality by him on the lines and plans hereinbefore shown.

XXXI.

THE GIFTS OF THE VANDERBILT FAMILY—LETTER OF W. K. VANDERBILT:

Cornelius Vanderbilt was the Founder of the University, and his posterity have, in furtherance of his purpose, and in execution of their own wishes as members of his family, cherished and helped and patronized the University generously.

Cornelius Vanderbilt gave to the University in all the sum of \$1,000,000; and

His son, William H. Vanderbilt, after the death of his father, the Founder, gave \$460,000; and

His son, Cornelius Vanderbilt, the Founder's grandson, gave to the University \$100,000; and

His brother, the Founder's grandson, William K. Vanderbilt, who is now living, has given \$500,000.

The interest which William K. Vanderbilt has in the University, and the conception which he, as the grandson and repre-

sentative of the Founder, has of the plan, origin, purpose, necessities and true policy of the University, and of the rights and powers of the Board, were, because of the issue that had arisen, stated by him to the Board on the 24th of May, 1910, in the following communication :

NEW YORK, May 24, 1910.

Chancellor J. H. Kirkland, Vanderbilt University, Nashville, Tenn.

MY DEAR CHANCELLOR KIRKLAND—I learn with regret of the crisis that has arisen in University affairs. The question of control is vital for every institution. Uncertainty on this point is weakness and danger. The Vanderbilt Board of Trust has heretofore claimed authority, so I am informed, to elect its own members. This form of university administration has been highly satisfactory to me, guaranteeing a stability that inspires confidence. In the past history of the University this has also seemed consistent with the friendliest relationship between the University and the Methodist Church.

It would seem to me very unwise to change this method of election, and especially so as the legality of the change is in question. Such information as I have on the subject indicates that your Board has both legal and equitable right to perpetuate itself. *If this is true, that right may not be properly surrendered to any other body without a violation of the trust.* Friends and benefactors are entitled to know the exact legal status of the University, and the rights of Trustees should be determined, if necessary, in the courts. In my opinion this settlement should be prompt and final. This need not mean unfriendly strife; it is in the interest of peace and harmony, and should be sought in that spirit.

Please convey to your Trustees my views in this matter, which spring out of the great interest I have in the future welfare of the University.

Yours truly,

W. K. VANDERBILT.

XXXII.

THE CHURCH HAS NOT PATRONIZED AND MAINTAINED THE UNIVERSITY.

To the allegation that Vanderbilt University is being “patronized and maintained” by the Church, and by the General Conference, its legislative body, and by the Church “at large,” respondents answer and say :

If by this is meant that the members of the Methodist Church, as heads of families and the fathers of sons, "patronize" the University by sending their sons to it to be educated, the statement is, in a large measure, true. Many Methodists have patronized and do patronize it in this sense, and the Board of Trust have adopted an educational policy which, as they believe, will not only induce the Methodist fathers of sons to "patronize" the University in the future in increasing numbers, but will also add to the luster and standing of those upon whom the University has already conferred degrees; but

It is by no means true that Methodists alone "patronize" the University in this way. The students of the Theological Department are Methodists and the sons of Methodists, but the students of the six other departments are not all Methodists, or the sons of Methodists. The students of these six departments of the University number about nine hundred, and of these not more than one-half are Methodists, or the sons or wards of Methodists. It is thus "patronized" in the student sense because it is a UNIVERSITY, and not a sectarian academy; and

If by "patronized and maintained" is meant that the Church and the General Conference support the University by supplying the requisite funds, respondents reply that this is not the case, but that its funds have been derived from the sources already shown, and that the Church, as an organization, has never made any material contribution, either to the endowment of the University, or to its annual maintenance. The *most significant* assessment ever made by the General Conference in relation to the University was one of \$25,000, in May last, to prosecute this suit against the University, in an effort to compel its Board to surrender to the General Conference their power and right to perpetuate themselves: wherefore

Respondents deny that the University is being patronized and maintained by the Church or General Conference, as in the bill is alleged.

XXXIII.

THE ACT OF 1895 DOES NOT GIVE THE METHODIST CHURCH THE
RIGHT TO ELECT MEMBERS OF THE VANDERBILT BOARD.

Respondents aver and say that the allegations of the bill in the preceding section considered are made to bring the case, for

relief, within the application of the Act of the General Assembly of Tennessee, passed January 25, 1895, known as Chapter 6 of the Session Acts of 1895. It is entitled "An Act for the benefit of incorporated educational institutions," and applies in terms to corporations chartered theretofore as well as thereafter. It provides that whenever an educational institution, incorporated under the laws of Tennessee, has been "established and is being maintained and patronized" by any religious denomination, the representative governing body of the denomination shall have the power to elect the Board of Trust, and to fill vacancies therein, and to increase or diminish the number of the trustees at pleasure and without limit; and that, in the event that such governing body shall fail to elect, or to fill any vacancy in the Board of Trust of the incorporated institution of learning, then such vacancies shall be filled as now provided by law; but

Respondents say that the said act *does not apply* to Vanderbilt University because, as has been shown, this University was not established by the Church, and was not being patronized and maintained by it at the time of the pretended election of the relators, or at any other time; and

They also say that, if the Church did in fact establish the University, and does "patronize and maintain" it, nevertheless the act cannot be invoked or relied upon by the relators in this case for the reason that it works a *fundamental change* in the charter of the University. It would operate (in the present case) not only to authorize the religious denomination, the Methodist Episcopal Church, South, to reduce or increase the number of Trustees at pleasure, but to deprive the University and its Board of Trust of the powers conferred by charter to fill its own vacancies, select its own Trustees and manage its own affairs, and to transfer that power to another body, not incorporated. Respondents aver that this would be a fundamental change in the charter of the University, and one, therefore, that the corporation has its election to accept or not; and that the corporation and its Board of Trust have never assented to, accepted, or acquiesced in it, but upon the contrary have refused and still refuse to acknowledge, recognize, be bound by, or accept it—as the relators well know; and

Respondents are advised and aver that the said act, if valid and applicable to the case of Vanderbilt University,

and if the University will not consent to the amendment, may give the State the right to dissolve the corporation, and to require it to transfer its property to another incorporated institution of learning of like character that will accept such amendment to its charter, but that it is ineffectual, as against the University, to confer *a present power* of filling vacancies on the Church or the General Conference, and that the University, as long as it has not accepted the act, and stands undissolved, undenuded of its property, and in the management and control of its affairs, is exclusive and supreme, under its charter and the law; wherefore

Respondents say that the said act confers no power or authority on the Church, or on its governing body, to intermeddle with the management and affairs of Vanderbilt University, or to fill vacancies in its Board of Trust; but

XXXIV

THE ACT OF 1895 IS UNCONSTITUTIONAL BECAUSE OF ITS DEFECTIVE TITLE.

Respondents aver and plead that the said act of January 25, 1895, is unconstitutional, null and void, in that it does not conform to the constitutional provision that an act shall contain *only one subject*, and that subject to be expressed in the title; whereas the said act contains more than one subject, as follows:

(a) It empowers *all educational corporations* to acquire property, and to receive gifts and bequests for educational purposes; and

(b) It empowers *some religious societies* and denominations, viz.: those that have established, and that patronize and maintain, educational institutions to elect the trustees of such institutions, and to fill vacancies in their Boards of Trust; and

(c) It empowers any two incorporated educational institutions to *consolidate* under a new corporate name; and

They further aver and plead that said act is unconstitutional, null and void, because the title thereof is stated or expressed in *such general terms* that it does not reasonably indicate even the general nature or character of the subject or proposed legislation. The title to this act states that it is an act "for the ben-

efit" of incorporated educational institutions. This indefinite, vague and general phrase comprehends anything and everything deemed "beneficial," but gives no information or indication whatever, general or special, as to the nature, character, or terms of the thing proposed to be done, or measure proposed to be adopted as a benefit, and for that reason the act is wholly and utterly void; and

XXXV

THE ACT OF 1895 IS VIOLATIVE OF THE FEDERAL CONSTITUTION.

Respondents aver and say that, if it shall be contended by relators, as it seems in their bill to be contended, that because of services rendered, or gifts made, by the Church or the conferences to the University prior to the passage of said act of 1895, the University was at that time being patronized and maintained, and has ever since been patronized and maintained, by the Church or the conferences within the meaning of the act, and if the act is susceptible of this construction, then and in such case the act is unconstitutional, null and void, because it is *retrospective*, and because it is in violation of Section 10 of Article I of the Constitution of the United States, declaring that no State shall pass any law impairing the obligation of contracts, and is in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, providing that no State shall deprive any person of life, liberty or property, without due process of law; and

Respondents further aver and plead that said act of 1895 is unconstitutional, null and void, for the reason that it is not in reality a charter amendment, but is an effort, in the guise of an amendment, to destroy the autonomy of a corporation, and to transfer its control to a third person or body or ecclesiastical corporation, which is not a member or stockholder of the corporation of which the act undertakes to give it control; and because the act, therefore, impairs the obligation of a contract, and deprives the university corporation of property without due process of law.

XXXVI.

THE BOARD HAVE ALWAYS CHERISHED FRIENDLY RELATIONS
WITH THE CHURCH.

The policy of the University and of its Board of Trust has steadfastly regarded the relations between the University and the Church; the value and desirability of the good will and support of the large, influential and earnest membership of the Church; the fact that, although the University was taken up by Mr. Vanderbilt, and founded by him, and given by him both form and substance as a university, it had its origin in the effort and desire of certain annual conferences to establish in the South an institution of the highest order on a sure basis for the education of the youth of the Church and country—failure though the effort was, so far as the conferences were concerned; and

It has not at any time been forgotten by the Board of Trust of the University that, whatever may have been the legal rights of the conferences, they had the moral right to regard Vanderbilt University as an institution at which Methodist theology would be cherished and taught; and

The policy of the Board has been to have Methodist ministers of the gospel to fill the positions of dean and professors and teachers of the theological department, and this policy it has always rigidly observed. It has heretofore been its policy to have a Bishop as president of the Board, and to have a member of the Methodist Church as Chancellor of the University, and to have a strong representation of Bishops in the Board; and it has been the policy of the Board, as the years have gone by, and students of the University, upon whom it had conferred degrees, have grown up and become men, many of them of eminence and distinction, to have the alumni of the University well represented on the Board—in the belief that no class of men could furnish Trustees that would have the true interest and welfare of the University more at heart; and

The connection that has heretofore existed between the University and the Church has been honorable to both, and has been helpful to both, and, while the Board of Trust of the University, for the reasons that are shown in this answer, have cherished the connection, the Church in return has shared in the

glory of the University, and, in the fact that the University has for more than a third of a century undertaken the education of its ministers, has received a substantial benefit that is incalculable.

XXXVII.

CONCLUSION.

Respondents do not answer Division XXIV of the bill, for the reason that it has been voluntarily stricken out by relators, who ascertained that its allegations were incorrect and unwarranted.

Respondents deny the truth of all of the allegations in the bill not hereinabove specifically admitted or denied, and will require strict proof thereof; and

Now having fully answered, respondents pray to be hence dismissed with their reasonable costs.

THE VANDERBILT UNIVERSITY,

By W. C. RATCLIFFE, *President.*

J. H. KIRKLAND, *Chancellor.*

JOHN J. VERTREES,

JAS. C. BRADFORD,

GEORGE T. HUGHES,

J. M. ANDERSON,

JOHN BELL KEEBLE,

JORDAN STOKES,

CHARLES C. TRABUE,

Solicitors.

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